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THESIS

LEGITIMIZING INTRA-STATE MILITARY INTERVENTION ON BEHALF OF HUMAN RIGHTS

by
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INTERVENTION ON BEHALF OF HUMAN RIGHTS**

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Submitted in partial fulfillment of the
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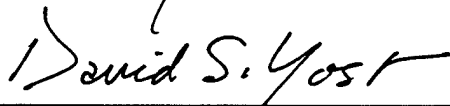
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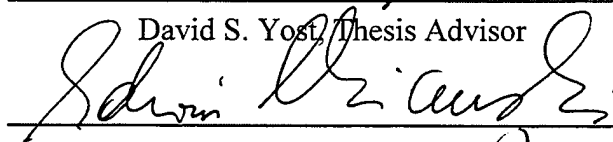


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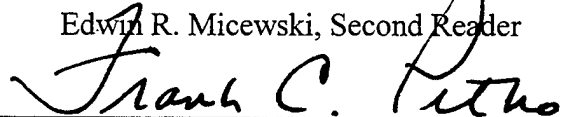
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ABSTRACT

Human rights have in recent years become a key justification for outside powers to intervene in conflicts within states. NATO's intervention in Kosovo in March to June 1999 is but one important example of this rationale. Despite the allied "victory," NATO's decision making was muddled and burdened by convoluted rhetoric and hesitancy and cannot serve as a model for any similar future engagements. It is out of the need to find a constructive way forward that the thesis argues for a rational course of action based on ideals but tempered with realism. International norms regarding state sovereignty, human rights, and intervention as propounded in the UN Charter and the Universal Declaration of Human Rights are discussed and critiqued. Kosovo is critically analyzed as a case study highlighting practical constraints and illuminating the need for reasserting clear definitions and guidelines that are philosophically well-grounded and legally viable. Philosophical obstacles to achieving clarity and formulating universal norms are briefly assessed. The thesis proposes a philosophical framework and norms that may well serve as the foundation for revised international guidelines. The conclusion argues for tempered international enforcement of clear and coherent guidelines that uphold specified, universally acknowledged human rights.

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EXECUTIVE SUMMARY

With the collapse of the Soviet Union, the realization of the age-old dream of a peaceful international order seemed at hand. However, things have turned out quite differently. The “new world order” has proven to be chaotic and violent, marked by intra- and inter-state conflicts. Though all has not turned out as expected, the end of the Cold War has offered unprecedented opportunities to mitigate human suffering. Human rights, enshrined since the end of the Second World War in the UN Charter and the Universal Declaration of Human Rights, have increasingly been upheld despite traditional notions of state sovereignty and domestic jurisdiction ruling out outside interference.

NATO’s intervention in Kosovo, largely justified in terms of stopping a “humanitarian catastrophe,” seemingly illustrates the contemporary prominence of human rights. Yet, the reality of what Eliot Cohen refers to as NATO’s “muddled” triumph underscores the confusion surrounding their place in international affairs. In fact, the legitimizing rationales propounded by four of NATO’s leading members, namely the United States, Britain, Germany, and France were diverse, often confusing and contradictory, and above all ambiguous.

To a great extent, these circumstances can be traced to the underlying confusion and lack of clarity surrounding the international norms propounded in the UN Charter and the Universal Declaration of Human Rights. Further reflection reveals that modernity is caught in the midst of the struggle of the forces of globalization and global fragmentation—forces which themselves embody the confusion and tension inherent in the constructs of an age undermined by relativism.

In light of this awareness and out of the need to nonetheless create a path forward, the thesis argues that the legitimization of intra-state military intervention on behalf of human rights requires a reaffirmation of natural law based on philosophical absolutes. Such a foundation offers the only adequate basis for revised international guidelines which reflect the need to reconcile clearly defined, universally applicable human rights and the general principle of state sovereignty. Although not ideal, this course of action offers the most reasonable way forward.

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To our three boys, Tobias, Matthias, and Tristan, I want to thank you for your patience and love when Dad had to do his *Arbeit*.

Most importantly, to my beloved wife, Sarah, I want to express my deepest admiration for creating a sanctuary in the midst of chaos. Without your support, encouragement, love, and never-ending belief in me and our vision, this thesis would have remained only a dream—SDG.

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I. INTRODUCTION

With the collapse of the Soviet Union and the end of the Cold War, the realization of the age-old dream of a peaceful international order seemed at hand. Political prophets predicted that the future would be one of ever-greater cooperation between states as unity in support of collective security would materialize and usher in global peace and prosperity. Things have turned out quite differently. As Lawrence Freedman observes, "President Bush's talk of a new world order . . . did not seem so utopian at the time as it does now."¹ A new world order, though, has come about. It is one marked by chaos—a chaos, which, on balance, "promises to be a messy one where violence is common, where conflicts within and between nation-states abound."² Yet, a dream once dreamt is difficult to let pass out of the mind's eye. Though all has not turned out as expected, the end of the Cold War has offered unprecedented opportunities to mitigate human suffering. In fact, the twin issues of human rights and humanitarian intervention are often found on the center stage of international debate. Yet, the opportunities seem to be slipping away, particularly after the West's debacle in Bosnia and Kosovo. In reference

¹ Lawrence Freedman, "Introduction," in *Military Intervention in European Conflicts*, ed. Lawrence Freedman (Cambridge, Mass.: Blackwell Publishers, 1994), 2.

² Richard Haass, *Intervention: The Use of American Military Force in the Post-Cold War World* (Washington D.C.: Carnegie Endowment for International Peace, 1994), 2. Haass specifically lists the following changes as affecting the post-Cold War world: splitting up of blocs leading to a loss of political control; revival of traditional great power politics; relative weakening of nation-states; the spread of conventional and unconventional military technology, creating new instabilities; relaxation of external threats and alliance systems; erosion of empires and multi-national states, leading to new phases of nationalism; movements defined more by ethnicity than by political ideology or territory; and efforts directed inwards against populations within a state's borders (3-4).

to the latter, Eliot Cohen summarizes well a widespread sentiment of perplexity about the muddled "victory":

A more sober estimate would acknowledge that our gains amount to the shortening of a massive act of brutality, and some measure of deterrent reputation. These are of real value. Our losses, however, include the alienation of many states that fear our desire and ability to meddle in their internal affairs, an open-ended commitment to an unstable Balkan protectorate, and, perhaps most dangerous of all, a belief that with enough air power, war can be smooth and easy.³

In light of these lessons and out of the "need to create some way ahead,"⁴ the following topic is not only timely but critically important: the legitimization of intra-state military intervention on behalf of human rights.

The investigation of this topic will be conducted in four stages: a description of the current situation of international law regarding humanitarian intervention; a case study of NATO's intervention in the Kosovo conflict illustrating the confusion and lack of clarity surrounding the present standards; a critique of the present UN system; and a reaffirmation of the philosophical and theoretical foundations of human rights.

THE CURRENT SITUATION: THE UN EXPLAINED

- This section provides a brief history and delineation of the documents governing international society⁵ with special

³ Eliot Cohen, "This Victory is Muddled at Best . . .," *The Wall Street Journal*, 7 June 1999.

⁴ William Safire, "Woodrow Wilson Lives," *New York Times*, 28 September 1998, A21.

⁵ The existence of international society is assumed *a priori*. To argue in the Realist tradition that international society is a fiction shrouding the reality of international anarchy flies in the face of the facts that societies do interact and cooperate on both the state level and sub-state level. The latter is evident in

emphasis on the tension between sovereignty and intervention as delineated by the UN Charter and the Universal Declaration of Human Rights.

A CASE STUDY: NATO'S INTERVENTION IN KOSOVO

- This section offers a critical analysis of the Kosovo conflict in 1998-1999 as a case study highlighting the practical constraints of the present international system and illuminating the need for clear definitions and guidelines regarding state sovereignty, human rights and intervention.

THE UN . . . CRITIQUED

- This section critiques the current UN system in light of the case study and the moral and legal norms which it claims to represent.

A WAY FORWARD

- This section weighs arguments for a reaffirmation of natural law. This approach, grounded in universal norms, could well serve as the foundation for revised international guidelines. This section concludes with a brief discussion of recommended guidelines for future interventions in support of human rights.

A. CLARIFICATION OF INTENT

This is not a policy analysis but an introductory theoretical and philosophical treatise. The aim is to lay down a foundation upon which not only further theoretical and philosophical work can take place, but which can serve as a tool in crafting specific policy recommendations. Principles are offered but not specific guidelines. Thus, for instance, concrete measures to ensure respect for human rights within a state, the institutions to direct such steps, and the mechanisms to enforce compliance constitute

the increasing role of non-governmental actors such as multi-national corporations and non-profit organizations.

areas for further research. Nonetheless, the foundational principles may provide an adequate framework to guide these steps. Second, the UN documents that are examined and the consideration of the Kosovo case are intended to illuminate the incorporation—or lack thereof—of the philosophical norms. Hence, the depth of their consideration is limited to the accomplishment of the end at hand. Third, though the case study is Western in origin, the intention of the thesis is to show the universal applicability of the norms. Thus, the documents under consideration are confined to ones endorsed by the UN General Assembly—globally the most diverse and comprehensive body of national representatives.

Furthermore, to build—or more accurately, to rebuild—the moral basis requires the reengagement of the philosophical discourse in which the issues are clearly defined, and agreement is reached on solid foundations leading to coherent and legitimate action. Thus, this thesis intends to illuminate the reality of a transcendental and universal concept of absolute values. Utilizing this framework, normative definitions, to the maximum extent possible, of justice, morality, “state system values,” “human rights values,” and intervention will be delineated. Furthermore, the three traditions identified by Martin Wight (the Rationalist, Realist, and Revolutionist traditions of thinking about international relations in Western civilization) serve as the basis for the consideration of the path forward.

Here, then, resides the heart of the thesis. Markedly absent from the contemporary debate, the philosophical discourse has been neglected in favor of the pragmatic spirit of modernity, which itself is clashing with the force of cultural relativism

marked by global fragmentation in the late twentieth century.⁶ As Richard Haass astutely observes, "We are now living in a period of history that can be characterized as one of 'international deregulation.' There are new players, new capabilities, and new alignments, but as of yet, no new rules."⁷ The urgency of the hour must not be played down nor the proposed remedy diluted. The way ahead requires a return to the philosophical quest for truth to illuminate those norms which must serve as the foundation for the "new rules." The implications of the word "must" are not to be taken lightly, for philosophically grounded, universally applicable norms alone will adequately serve as the foundation for any world order that desires legitimacy deeper than unrestrained *Machtpolitik*.

No attempt is made to lay out the philosophical case in its entirety. Rather the intent is to take a small—though important—piece of this complex puzzle and illustrate that in a world yearning for peace and security, but faced with a crumbling social and moral order, the way ahead—at least regarding military intervention on behalf of human right—lies in pursuing a Rationalist course founded on a conception of universally applicable human rights tempered by an acute awareness of an often dangerous and hostile reality. Roger Cohen's words about NATO should resound through the halls of the UN: "But in an end-of-the-century world of failed states and repeated atrocities, it

⁶ See Benjamin Barber, "Jihad vs. McWorld," *The Atlantic*, March 1992. Available [Online]: <<http://www.theatlantic.com/politics/foreign/barberf.htm>>) and Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1996).

⁷ Haass, 5.

appears that NATO has decided it must sometimes have the courage to act to uphold a moral standard, one that the laws of war have long, but often vainly, identified.”⁸ Delineating this moral standard and urging its defense are at the heart of this thesis.

B. A CONSIDERATION OF “CLARITY”

Yet, an obstacle to any delineation of standards is a ubiquitous obscurantism barring precisely the clarity and precision required. In light of the importance of the present undertaking, obscurantism cannot be allowed to stand unchallenged. To understand the importance of clarity in the present investigation, consider the nature of the Kosovo crisis.⁹ The Kosovo cycle or, as Michael Ignatieff puts it, “the cycle of impunity,”¹⁰ can be viewed as a macabre farce with a repeating story line: some horrific undertaking by Milosevic—or by the Kosovo Liberation Army (KLA)—led to emotional outrage and bombastic condemnation by Western powers, which served as penance that

⁸ Roger Cohen, “NATO Shatters Old Limits in the Name of Preventing Evil,” *New York Times*, 18 October 1998, sec. 4, p. 3.

⁹ The crisis in Kosovo has roots back to 1989 when the Serbian leader Slobodan Milosevic took away Kosovo’s autonomy. Of course, the argument can be made that the roots reach even further back to World War I and even deeper still to the schisms of the Church, the Moslem invasions of the Middle Ages, and the infamous and legend filled defeat of the Serbs at the Battle of Kosovo Polje in 1389. However, for the present consideration, the backdrop of March 1998 serves as a good starting point. It was then that Milosevic escalated his operations in Kosovo and Kosovo demanded outright independence. The escalation of the crisis would lead up to the pivotal approval of UN Security Council Resolution 1199 on 23 September 1998 and the resulting NATO Activation Order (ACTORD) signed into effect on 12 October 1998 (“Timeline: Countdown to Conflict,” 18 January 1999. Available [Online]: <http://news.bbc.co.uk/hi/english/special_report/1998/kosovo/newsid_99000/00748.s3/3/99> [3 March 1999]. It is with the unfolding of the events following these latter two actions that the present study is concerned.

¹⁰ Ignatieff quoted in Rieff, “A New Age of Liberal Imperialism?” *World Policy Journal* 16, no. 2 (summer 1999): 5.

did not reach heaven but tickled the ears of fellow men who, in turn, calmed themselves only to be faced with a new horrifying episode. “Hoffen, Bangen und Raushalten—darauf gründet[e] sich das internationale Engagement in Kosovo” (hoping for the best, fearing the worst, and staying out at all costs—on these pillars the international engagement in Kosovo [was] founded).¹¹

It seemed during much of the Kosovo crisis that the ever-present and often conflicting themes of *Realpolitik*, human rights, state-sovereignty, and legitimacy were employed by an army of actors producing a play with much action but no progress. The definitions and standards of the UN Charter and the Universal Declaration of Human Rights only added to the confusion. It seemed that the “script” found in these documents was written for a different play; this became all too evident as the crisis unfolded.

It is clarity, after all, which offers perspective, insight, and understanding and, in its full glory, this would entail omniscience. Though this is not a gift granted to man, the present muddled state of affairs is a far cry from what could and must be seen clearly if vigorous and effective solutions are to be formulated for future military interventions on behalf of human rights.

As one analyst observed in light of the Kosovo episode, “Clarity about Serbia’s crimes would lead inexorably to clarity about goals.”¹² Clarity was never achieved—not with regard to the crimes nor with regard to what should be done. For the Kosovars all

¹¹ Peter Münch, “Paradoxe Mission im Kosovo.” 8 December 1998. Available[Online]: <<http://www.kosova-info-line.de/kil/pressestimmen-354.html>> [2 March 1999].

¹² Fred Hiatt, “In the Face of Evil,” *Washington Post*, 9 May 1999, p. B9

that remained was the hope of belated but effective reaction. Even then all the victims of the greatest brutality in Europe since the Second World War received was a befuddled campaign which has left Kosovo a virtual protectorate of NATO and the UN. *The Economist's* assertion has a sad ring of truth: "The job of restoring stability to Kosovo will be long and expensive, as will the reconstruction of the wider region. Plenty there for Europeans to do—Russia included—without taking on other wars of principle."¹³

Hence, Kosovo, far from ushering in a new era, has only muddied the waters all the more. In this sense, one can only hope that Kosovo does remain the exception. If such efforts are taken to be the norm, "intervention fatigue"¹⁴ is sure to set in quickly; and neo-isolationists will gain ever more clout.¹⁵ The world will then be worse off. The present mire allows diplomatic doublespeak, contradiction, and ambiguity to flourish—to say nothing of stagnation of effort while suffering continues. On the world's stage, the farcical theatre of the macabre is left to play on after a short intermission. As *The Economist* remarks in light of haphazard humanitarian interventions, "The peace they bring is usually a false peace—a temporary affair that reverts to violence when the mediators turn away."¹⁶ This is a clear perception of a reality—"a false peace"—that is best avoided. To the end of formulating a more effective form of humanitarian

¹³ "Sorting out Kosovo," *The Economist*, 19 June 1999, 16.

¹⁴ Melissa Roberts, Ron Moreau, and Michael Hirsh, "A Superpower's Dilemma," *Newsweek*, 20 September 1999, 33.

¹⁵ "Isolationism's Return," *New York Times*, 31 October 1999, sec 14, p. 14.

¹⁶ "Other People's Wars," *The Economist*, 31 July 1999, 13.

intervention, one must first achieve clarity—a clear understanding of the shortcomings of the present set of international standards, and clarity of mind to see through the diplomatic rhetoric, which relies precisely on ambiguity to disguise its *Realpolitik* interests in more humane terms.

C. THE WAY OF TEMPERED OPTIMISM

While this thesis expresses tempered optimism regarding the possibility of a brighter future, the sentiment is not universally shared. Richard Haass, for example, argues that in the “foreseeable future, no single overarching foreign policy doctrine or touchstone is likely to command widespread popular and elite support.” In his view, “[N]o intellectual edifice is likely to emerge that will suggest how specific local events are to be viewed” nor what should be done about them.¹⁷ In a similar vein, George Kennan voices his skepticism about moral standards entering the political arena. According to Kennan, when a citizen enters government, his “moral principles” undergo a “general transmutation, and the same moral concepts are no longer relevant” to his official responsibilities.¹⁸ Moreover, in Kennan’s view, the responsibilities of government are primarily a practical and not a moral exercise, and are limited to the negative functions of bounding conflict and restraining selfishness.¹⁹

¹⁷ Haass, 6-7.

¹⁸ Kennan quoted in Mark R. Amstutz, *Christian Ethics and U.S. Foreign Policy* (Grand Rapids, Mich.: Academie Books, 1987), 23.

¹⁹ Amstutz, 23-24.

What Haass and Kennan seem to forget is that governments also have a positive responsibility to promote justice, peace, and human dignity. Morality is the guiding light in this process, and therefore it is less a set of fixed rules than a set of principles to "guide and inform human choices."²⁰ Moreover, as Kenneth Thompson notes:

In foreign policy the concept of elemental right and wrong is never fully realized, but it can be approximated. Even the fact that states possess an awareness of injustice indicates the possibility of justice in foreign affairs, for a sense of injustice presupposes categories of justice to which leaders have recourse.²¹

Hence, while decisions will have to be made on a case-by-case basis, these decisions must be governed by a conception of justice and morality in international relations; and this conception, though difficult to discern, must nonetheless be "authoritative and binding."²² Yet, given the lack of a common international political authority, agreeing on a definition of justice and promoting that definition have proven difficult, all the more so as notions of universality have given way to positivism and, even more dangerously, relativism. This difficulty has been evident in the development of the concepts of sovereignty and human rights in the UN.

²⁰ Ibid., 24.

²¹ Kenneth Thompson, *The Moral Issue in Statecraft* (Baton Rouge: Louisiana State University Press, 1966), 127.

²² Amstutz, 24.

II. THE CURRENT SITUATION: THE UN EXPLAINED²³

The UN was a creation of post-war penitence and euphoria. Like the League of Nations before it, the UN reflected the desire—one could easily argue, the need—to create a mechanism to avoid a repetition of the horrors recently experienced. Its formation reflected hope—a hope that the present would remember the past and chart a more congenial future.²⁴ Yet euphoria quickly vanished in the face of a dawning Cold War. The penitence which cried “never again” was hushed by the older patriarchs of the international system: sovereignty and non-intervention.

A. THE STATE-SYSTEM, SOVEREIGNTY, AND HUMAN RIGHTS

Though the state is to this day the “outstanding feature and dominant actor on the international scene,” it is by no means a fact of nature and by all means a fact of history.²⁵ A similar line of reasoning follows the closely associated axiom of sovereignty. Hence, the concept of state sovereignty—or similar notions that could be

²³ This section is dedicated to simply describing the modern development of the notions of sovereignty, intervention, and human rights as they came to be depicted in the UN Charter and accompanying documents. A critique of the UN system in light of the Kosovo case study may be found in this thesis in the “UN . . . Critiqued” section.

²⁴ Interestingly, Martin Wight once noted, “Hope is not a political virtue; it is a theological virtue.” (from “Christian Commentary,” talk on the BBC Home Service, 29 October 1948 quoted in Martin Wight, *International Theory: The Three Traditions*, ed. Gabriele Wight and Brian Potter (London: Leicester University Press, 1994, reprint 1996), xvi-xvii). Wight’s comment stands in counterpoint to the quasi-religious faith some have placed in the UN and the human rights movement. As is often the case with such doctrinally weak but experientially strong movements, precision and clarity are relegated to secondary importance and often viewed as impediments to successfully prosecuting “the cause.”

²⁵ Peter Calvocoressi, “A Problem and its Dimensions,” in *To Loose the Bands of Wickedness: International Intervention in Defense of Human Rights*, ed. Nigel S. Rodley (London: Brassey’s, 1992), 1.

applied to empires or kingdoms—is at best a legal fiction (a principle of positive law, as opposed to natural law) whose reality has been repeatedly challenged throughout history by a seeming constant: war. It is with this awareness in mind that Peter Calvocoressi observes:

Like all legal fictions it [sovereignty] serves a useful purpose by providing ground rules or touchstones, but by affirming that all states are sovereign and equally sovereign it purports to confer upon them something which most of them neither have nor can have: immunity from restraint or reproach and, in particular, immunity from interference in their domestic affairs. Such immunity, where it exists, derives not from sovereignty but from power.²⁶

Yet to avoid a Hobbesian state of global anarchy governed by a social Darwinistic power struggle, states have acknowledged that certain laws are above the state, including the laws of war.²⁷ However, acknowledgement does not always imply observance, according to the dictum that “the strong do what they can and the weak suffer what they must.”²⁸

It would be left to the Treaty of Westphalia in 1648 to codify an international system which incorporated a notion of inviolable sovereignty such that “belligerent

²⁶ Calvocoressi, 3.

²⁷ As Calvocoressi notes, “The laws of war—part product of judicial notions of natural law and part product of the rise of a bourgeoisie for which war meant the destruction of commercial opportunities—affirmed that the state was free neither to make war merely because it wished to nor to conduct war in any way it pleased” (Calvocoressi, 2).

²⁸ Thucydides, *The Peloponnesian War*, trans. Richard Crowley (New York: Random House, 1951), 331.

countries had solemnly pledged not to intervene in each other's internal matters."²⁹ Seventeenth-century legal scholars and political philosophers such as Jean Bodin, Hugo Grotius, and Thomas Hobbes defined sovereign statehood as the "absolute and secular legislative power mainly within the domestic policy domain."³⁰ The groundwork had been prepared for the positivism of the eighteenth century and Vattel's notion that the "binding nature of international norms was contingent upon *a priori* acceptance by the State."³¹

Ironically, though rejecting the universal framework, positivists were forced to concede in practice that certain notions, such as justice, merited *a priori* acceptance precisely because they were transcendental. As Sir Francis Bacon stated, it was not the state but a man who "in the first state of creation . . . had the sovereignty and the power."³² Thus, the concept of justice as developed by Thomas Aquinas, Francisco de Vitoria, and Grotius laid the foundation for the revolutionary doctrine of *droits de l'homme* championed in the French Revolution. Here the rights of the individual understood in light of a "social contract" were heralded as the roots of the legitimacy of the state and an essential prerequisite to a just order. Hence, intervention, understood as

²⁹ Janina W. Dacyl, "Sovereignty versus Human Rights: From Past Discourses to Contemporary Dilemmas," *Journal of Refugee Studies* 9, no. 2 (1996): 136.

³⁰ *Ibid.*, 136-137.

³¹ *Ibid.*, 137. See also R.J. Vincent's *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986).

³² Bacon quoted in Dacyl, 137.

protecting the individual from a contractual violation by the state, was at least theoretically acknowledged and often practiced, at least with respect to a state's own nationals abroad.³³

Nonetheless, humanitarian intervention as a general principle has always been dubious in light of the positive law theorist's denial of a transcendental obligation to right such ills. Positivism and its corollary, particularism, have in many ways defined modernity in general and specifically the basis of the modern state-system.

B. THE UN AND THE PRINCIPLE OF SOVEREIGNTY

Consequently, it is not surprising that the principle of sovereignty and its corollary of non-intervention stand among the most clearly pronounced principles of the UN Charter. Regarding the issue of sovereignty, the Charter places constraints on both the individual state and the United Nations as a whole. The former is addressed in Chapter I, Article 2(4):

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.³⁴

Furthermore, in the same chapter, Article 2(7) bolsters this assertion by clearly declaring that non-intervention is the norm for the United Nations as a whole:

³³ Dacyl, 141.

³⁴ Article 2(4) of "The Charter of the United Nations," in *Swords Into Plowshares: The Problems and Progress of International Organization*, Inis L. Claude, 4th ed. (New York: Random House, 1971), 465.

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.³⁵

Having upheld the principle of sovereignty, the authors of the Charter realized the need to resolve disputes. Consequently, the provisions for the peaceful settlement of disputes under Chapter VI, Articles 33-38, were drafted. Taken together, these articles serve as the backbone of the policy of non-intervention and the peaceful resolution of disputes.

Yet intervention is not entirely excluded. Thus, Chapter VII (in Articles 39-51) generally provides for intervention in the event of a "threat to the peace, breach of the peace, or act of aggression."³⁶ Special prominence is given to distinguishing between non-forcible and forcible forms of intervention. Thus, the former—understood as "not involving the use of armed force"—involves "complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."³⁷

The provision for forcible intervention addresses military action to "maintain or restore international peace and security."³⁸ The importance given to the assertion that

³⁵ Article 2(7) of "The Charter of the United Nations," 465.

³⁶ Article 39 of "The Charter of the United Nations," 473.

³⁷ Article 41 of "The Charter of the United Nations," 473-474.

³⁸ Article 42 of "The Charter of the United Nations," 474.

intervention can only take place in light of peace and security issues seems clear. To remove any doubts, Article 51 notes that the procedures for peacefully handling grievances will only be superseded in cases of necessity. Article 51 also notes that “nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations.”³⁹ However, this right of self-defense holds only until the “Security Council has taken the measures necessary to maintain international peace and security.”⁴⁰

Yet as is customary with most decrees and language in general, clarity and precision are never perfectly attained. As Calvocoressi states, paraphrasing Montesquieu, “Law is relative to the spirit of the times” and laws “fall into desuetude or are repeatedly violated unless they are adjusted by interpretation.”⁴¹ Hence, since their inception, but all the more in the present state of uncertainty following the end of the Cold War, definitions of threats to “international peace and security” and “self-defense” are hotly debated. This debate is all the more pronounced due to the increasing prominence of human rights, which, their defenders argue, are clearly delineated in the Charter and subsequent documents.

³⁹ Article 51 of “The Charter of the United Nations,” 476.

⁴⁰ Ibid.

⁴¹ Calvocoressi, 4.

C. THE UN AND THE PRINCIPLE OF HUMAN RIGHTS

In fact, the UN Charter does give prominence to the importance of human rights: the preamble proclaims, "We the peoples of the United Nations . . . reaffirm faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women. . . ." ⁴² The Charter goes on to delineate the specifics most explicitly in Article 55. ⁴³ Lumped together with a broad endorsement of "universal respect for, and observance of, human rights and fundamental freedoms" are vaguely defined calls to promote socioeconomic development. ⁴⁴ Article 56 calls on all members to "pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55." ⁴⁵ Again, ambiguity exists to a large extent. For instance, nowhere in the Charter is a definition found of what precisely is meant by the "promotion" of human rights. As Nigel Rodley observes, the "Charter drafters had eschewed explicit reference to the protection of human rights as opposed to its promotion." ⁴⁶ The basis for their promotion then rested to

⁴² Preamble of "The Charter of the United Nations," 463.

⁴³ References to human rights and their promotion are also found in Article 1(3), 13(1b), 62(2), 68, 76(c), and 105 of "The Charter of the United Nations," 464-481.

⁴⁴ Article 55 of "The Charter of the United Nations," 477.

⁴⁵ Article 56 of "The Charter of the United Nations," 477.

⁴⁶ Nigel S. Rodley, "Collective Intervention to Protect Human Rights and Civilian Populations," in *To Loose the Bands of Wickedness: International Intervention in Defense of Human Rights*, ed. Nigel S. Rodley (London: Brassey's, 1992), 18.

a large degree on the “principle of ‘good faith’ in the treaty.”⁴⁷ However idealistic such a view may have been, the “good faith” did produce the Universal Declaration of Human Rights and an array of subsequent global and regional agreements.

Issued by the General Assembly on 10 December 1948, the Universal Declaration of Human Rights boldly asserts in its preamble the “inherent dignity and the equal and inalienable rights of all members of the human family.”⁴⁸ The Declaration is to serve as a “common standard of achievement for all peoples and all nations.”⁴⁹ Thus, beginning in Article 1 with the assertion that “all human beings are born free and equal in dignity and rights,” it proclaims in its thirty articles a spectrum of individual rights. These thirty articles were later expanded in a host of formal documents of which the Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights of 1966 are the most important. These two Covenants described in greater detail the rights proclaimed in the Universal Declaration of Human Rights as well as formulating “optional compliant procedures to ensure that parties to the Covenants fulfil their obligations.”⁵⁰ Together with the Universal Declaration of Human Rights, these documents collectively form what is commonly referred to as the International Bill of Human Rights. Janina Dacyl

⁴⁷ Dacyl, 148.

⁴⁸ “Universal Declaration of Human Rights.” Available [Online]: <<http://www.un.org/rights/50/decla.htm>> [16 November 1998].

⁴⁹ Ibid.

⁵⁰ Dacyl, 149.

describes this Bill as the “cross-national normative consensus concerning four groups of rights,” which she categorizes as follows:

- “Survival” rights: right to life, food and health care
- “Membership” rights, which assure one an equal place in society, family rights and the prohibition of discrimination
- “Protection” rights, which guard the individual against the abuses of power by the state: rights to *habeas corpus* and an independent judiciary
- “Empowerment” rights, which provide the individual with the control over the course of his or her life, and in particular, control over (not merely protection against) the state: right to education, a free press, and freedom of education⁵¹

Compound these declarations with the four 1949 Geneva Conventions which take account of the fundamental “laws of humanity and the dictates of the public conscience” and the basis for humanitarian intervention seems firm.⁵²

Yet the basis for humanitarian intervention has never been clear. Prior to any UN formulation, humanitarian intervention was more a “response triggered by a humanitarian impulse to alleviate a human disaster than an attempt to uphold individual *rights* as

⁵¹ Ibid., 149-150.

⁵² Rodley, 20. Rodley goes on to observe that these “laws” constituted a “sort of extralegal or metalegal notion somehow aimed at reconciling the rigours of the law with the irresistible demand of a conflicting morality.” Interestingly Nigel Rodley observes in a footnote on p. 41 that the term “laws of humanity” is replaced by “principles of humanity” in “Additional Protocol I, article 1(2) and Additional Protocol II, preambular para. 4, both 1977.” It seems the pursuit of constraining positive law under a transcendental rubric was given up. Indicative of positivism, the constraint of certain laws as applicable to all humanity has been emasculated of its transcendental legitimization: a law is only a law if agreed upon by the community. Consequently, humanity, a term prone to imprecision and manipulation, is best confined to the realm of principle rather than attempting to define it in the rigorous terms of positive law.

against the oppressive state authority.”⁵³ Despite the numerous UN documents supposedly clarifying the need to uphold human rights, little was done during the Cold War due to the paralysis induced by the East-West conflict. In the wake of the Cold War, Rodley maintains, serious “human rights violations have simply become over the years matters of international concern and no longer ones ‘essentially within the domestic jurisdiction’ of states.”⁵⁴

Yet proposals for humanitarian intervention still face skepticism and the fear that human rights are but mere palatable euphemisms concealing less altruistic motives and justifying the pursuit of power interests. Rodley’s summation of the pre-UN sentiment seems relevant today, especially if the word “Christian” is replaced with its modern secular equivalent of the “West”:

The extent to which the interventions were free from challenge on their own moral-legal grounds has been questioned. Usually, only certain minorities seemed to be able to benefit from the doctrine (e.g. the Christian populations mentioned above); only certain (stronger) powers could apply it (e.g. the large, Christian European powers); only certain (weaker) powers could be subjected to it (e.g. the Sublime Porte); the interventions usually had the effect (and therefore the purpose?) of advancing the broader political/strategic interests of the intervening state(s) at the expense of those of the target state; and, especially tellingly, there were numerous atrocities that were blithely overlooked by potential rescuing states (e.g. the Jews in Europe and Armenians in Turkey)—often

⁵³ Ibid., 20 (emphasis in the original).

⁵⁴ Ibid., 23.

precisely on the formal grounds that these were domestic matters!⁵⁵

Since the advent of the UN, the international system seems to have changed very little. Since 1945, at least 150 wars have raged between states, and Hitler-like atrocities to which the world supposedly said "never again" have taken place under the auspices of Idi Amin, Jean-Bedel Bokassa, and Pol Pot. Though one could argue that the functioning of the UN system was hampered by the reality of the bipolar power struggle, the human rights failures since the end of the Cold War point to a more fundamental problem. To be sure, the protection of the Kurds in northern Iraq after 1991 constituted a relative success, but it seems to have been an anomaly in light of the failures in Somalia, Rwanda, and the former Yugoslavia. As for Kosovo, the case study in the next section of this thesis illuminates the reality of what can be described as, in the words of Eliot Cohen, at best a muddled "victory."⁵⁶

It is important to note that the greatest strides in the building of international society appear to have taken place as a mixture of penitent reaction to the horrors of war and a burst of euphoria which generally accompanies a war's end. This formula applies to the League of Nations no less than to the United Nations and the calls for a "new world order" since the end of the Cold War. The danger of building on post-war euphoria is, however, its inherent elasticity. With time sentiments return to less revolutionary ideologies and to a dispassionate acceptance of the status quo. What at first appear to be

⁵⁵ Ibid., 20.

⁵⁶ Eliot Cohen, "This Victory is Muddled at Best. . . ."

great leaps turn out to be (at best) small steps. As Rodley notes, "If the wind is breathing in the direction of collective humanitarian intervention, it may be difficult to keep it blowing in the absence of a threat to international peace and security manifested by palpable transborder consequences."⁵⁷ It is therefore imperative to effectively utilize the opportunities of the present—to hone penance and euphoria and ensure that small steps are taken.

In this light, what can one say with regard to Kosovo? Has humanity taken any new steps forward? Was the intervention the exception or the precedent? Has the "international community" succeeded in defining the relationship between sovereignty and human rights? Or is Kosovo to be viewed as merely another instance of what can at best be described as a "response triggered by a humanitarian impulse to alleviate a human disaster,"⁵⁸ as at worst another instance of human rights serving as a cloak for power politics, or, as a complex mix of the two?

To answer these questions, the focus now turns to NATO's intervention in Kosovo. The following brief analysis is not intended to be a comprehensive consideration of the Kosovo crisis. Rather, the objective is to illuminate the need for clarity regarding human rights and intervention in light of the current rhetoric, which reflects a confusion of definitions.

⁵⁷ Rodley, 40.

⁵⁸ Ibid., 20.

III. A CASE STUDY: NATO'S INTERVENTION IN KOSOVO

The answer was simple. When questioned about the NATO Activation Order (ACTORD) signed on 12 October 1998, a NATO official, wishing to keep his anonymity, stated that the allies had derived the legal basis for their military intervention against Milosevic from "relevant UN Security Council resolutions." As summarized by the *Xinhua News Agency*, the official cited resolution 1199 as support and stated that the "Kosovo crisis not only affected domestic security but also regional security as well, which combined with the international human rights conventions, formed the legal basis for the NATO action."⁵⁹ In retrospect, the answer was deceptively simple. Behind this terse explanation for the legality of the ACTORD seethed the cauldron of world politics filled with a host of discordant ingredients ranging from clashing interests to antagonistic power relations and fundamental doctrinal and philosophical antagonisms. Seeking clarity in the matter is further complicated by the host of international organizations that had and still have their hands in the pot, namely NATO, the UN, the OSCE, and the Contact Group. Not monolithic entities, these organizations are comprised of states whose interests often clash with each other. Even within a state's own boundaries various antagonistic interests vie for dominance. Hence, the reasons offered for legitimizing the ACTORD, though succinctly stated, were anything but simple.

⁵⁹ "NATO Looks for Legal Ground for Action in Yugoslavia," *Xinhua*, 12 October 1998. Available [Lexis/Nexis]: NEWS/ALLNWS [25 February 1999].

It is the intent of this section to bring some measure of clarity to the matter. Specifically, though unanimously agreed upon by the members of NATO, the legitimization rationales for intervening militarily in Kosovo as advanced by four of its leading members, namely the United States, Germany, France, and Britain, were diverse, occasionally confusing, often contradictory, and above all ambiguous. The resulting lack of clarity lies at the heart of the mire in which the Western powers keep finding themselves.

This analysis concludes that it was as a result of American leadership that the activation order was authorized; that Britain, America's loyal knight, followed suit; that Germany sided with America as has been its fashion for a half a century; and that France joined in for fear of being left out and thereby losing its self-assigned place in the sun. This analysis finds that once the clouds of obscurity have been dispelled and clarity has been achieved, the legitimizing rationales propounded by these four nation-states, examined first as individual actors and then collectively as Western powers, reflect a lack of conviction to the cause of stabilizing the Balkans as well as illustrating the confusion surrounding definitions and standards of human rights and legitimacy as propounded by the documents previously considered. In conjunction, these factors resulted in the stagnation of Alliance efforts while the devastation in Kosovo continued. When action in the form of air strikes finally transpired, it only proved to be a classic case of too little done too late and too haphazardly. As *The Economist* astutely points out:

The Kosovo war was not fought for conventional reasons of national interest, nor yet was it quite the humanitarian venture that western leaders proclaimed it to be. Rather it

was a war they stumbled into by miscalculation when their diplomacy failed; it then became not just a war to end Serb injustice, but also a war to preserve NATO's credibility. Next time, it must be hoped, the West will either be less free with its threats of force, or make sure it can live up to them.⁶⁰

Truly, the Fukuyamian vision that the end of the Cold War brought with it the end of history has proven to be more wish than reality.⁶¹ For all the imperatives of globalization, the world is still a place of messy wars and messy forms of peace. Though historically speaking, moral progress may well be impermanent, every generation still has a responsibility to "create some way ahead" in a "crumbling world."⁶² In light of the calamities of the twentieth century, of which Kosovo has proven (it may be hoped) the last, and in light of the need to chart a better path forward into the new millennium, the West and, moreover, the rest of the world must stiffen their resolve to be forthright with regard to their intentions and abilities. This will only transpire if the foundation of the new construct is stable and universally applicable.

The following case study of Kosovo illuminates the present construct and the weak foundation upon which the present international system rests. This analysis may in turn allow light to shine on the path forward—relaunching philosophical discourse in the mainstreams of politics with renewed vigor and clarity of purpose. That is, it must be recognized that politics is not an amoral undertaking, a mere exercise in *Realpolitik*.

⁶⁰ "Other People's Wars," 13.

⁶¹ See Francis Fukuyama's *The End of History and the Last Man* (New York: Avon Books, 1993).

⁶² Safire.

Rather, politics is founded on philosophy, which alone is equipped to fortify the pillars of legitimacy and human rights. In this vein, Nicole Gnesotto of the *Institut Français des Relations Internationales* has observed of the “relative power of individual Western countries” in shaping the direction of strategic considerations in the former Yugoslavia: “If such an attitude were to prove the precedent for European strategy in the future, this would be an omen of an arbitrary European order, based on the proposition that might is right and only tempered by a concern to maintain regional and global strategic balance.”⁶³ Although some would be quick to point out that this is but traditional *Realpolitik*, the “truth of the Yugoslav conflict is that . . . democracies are in such a state of crisis themselves that they are no longer capable of differentiating between the manageable and the unacceptable.”⁶⁴ Truly, Gnesotto’s conclusion is worth repeating: the only “*Realpolitik* that will succeed is one which is moral.”⁶⁵

In pursuit of this goal, definitions must be clearly articulated and standards clearly delineated. The West must then choose to act courageously or face the reality of its cowardice, for ambiguity will no longer exist to serve as a cloak hiding the fact that the West has not lived up to its highest traditions.

⁶³ Nicole Gnesotto, “Lessons of Yugoslavia,” *Chaillot Papers* 14, March 1994, 44.

⁶⁴ *Ibid.*, 11.

⁶⁵ *Ibid.*

A. WHY KOSOVO?⁶⁶

Why should Kosovo serve as the case study and not Rwanda, Somalia, or even the more recent intervention in East Timor? The answer resides in the fact that Kosovo exemplifies most poignantly the problems with the current understanding of human rights and intervention. As David Rieff observes, "The conflict over Kosovo, the first war ever waged by the NATO alliance, was undertaken more in the name of human rights and moral obligation than out of any traditional conception of national interest."⁶⁷ It was thus a unique undertaking with regard to the reasons proffered to justify the intervention as well as the manner in which it was conducted, namely a coalition (NATO) using force without explicit United Nations Security Council (UNSC) authorization. In this light, some observers argue, the humanitarian intervention in Kosovo may serve as the basis for a rule of exception—that is, a precedent regarding similar operations in the future.

Furthermore, unlike Rwanda or East Timor, Kosovo clearly highlights the nature of the post-Cold War world by laying bare the conflicting elements of globalization and global fragmentation. Hence, Kosovo was not solely a NATO operation, in view of the interplay with the UN and Russia—and to lesser extent China. In one sense, Kosovo should have proved to be a relatively non-controversial case given that it was only marginally of geo-strategic and economic importance. In these circumstances, unanimity

⁶⁶ The use of Kosovo as a case study should not be interpreted as an endorsement for the Kosovars's quest for independence. Rather, the Kosovar pursuit thereof is itself a highly contentious matter and in need of study in its own right. Suffice it to say that universal principles of right, justice, and goodness, from which the principles for intervention on behalf of human rights are deduced, do not exculpate an unreflected right to fight for independence.

⁶⁷ Rieff, "A New Age of Liberal Imperialism?" 1.

in dealing with such a clear instance of human rights violations—labeled locally as “ethnic cleansing”—should have been relatively easy to attain. This should have been all the more true, given the UN Charter’s implicit promise of “never again” after the massive human rights violations and instances of genocide in World War II.

However, given the reality of continued East-West and North-South friction, this “clear cut” case proved riddled with contentions. Thus, if the West and the East cannot agree to prevent or punish atrocities and egregious human rights violations on their frontiers, how much less inclined will they be to intervene in more remote locations, such as East Timor? As the American National Security Advisor Sandy Berger observed in response to the question, “Why Kosovo and not East Timor?” Kosovo is “in the middle of Europe,” while East Timor is “in Asia.”⁶⁸

Furthermore, East Timor, though itself strategically and economically unimportant, was different in that the aggressor, Indonesia, is of strategic importance: “Serbia does not count for us. Indonesia does.”⁶⁹ Hence, if the West cannot stand united to coherently address a relatively clear case of human rights violations in its “own backyard” committed by a third-rate power (Serbia), how can it uphold the banner of human rights in a global context? In this sense, Kosovo is a “simple” case study which removes many of the complicating factors present in cases such as East Timor. The

⁶⁸ Berger quoted in Charles Krauthammer, “The Limits of Humanitarianism,” *Time*, 27 September 1999, 118. Ash also notes in response to a similar question, “Duties are related to distance” (Ash, “Ten Years in Europe,” in *Prospect*, July 1999. Available [Online]: <http://www.prospectmagazine.co.uk/highlights/ten_years/index.html> [18 August 1999].).

⁶⁹ Krauthammer, 118.

waters are muddied enough as it is, and laying bare the root of the problem is most easily done when the greatest number of tangential variables can be removed. Kosovo is such an instance.

B. THE UNITED STATES

The importance of the United States as the fulcrum actor is difficult to overestimate. As the BBC observed in October 1998, "The United States is fully engaged, leading the way both in diplomacy and in preparations of war."⁷⁰ This observation is anything but a European stigma attached to an unwilling recipient. As Secretary of State Madeleine K. Albright has stated on numerous occasions, NATO is "our institution of choice" for "defending Western values on the continent."⁷¹ Even more explicit and broadly applicable are the words of President Clinton:

We cannot respond to such tragedies everywhere, but when ethnic conflict turns into ethnic cleansing where we can make a difference, we must try, and that is clearly the case in Kosovo. Had we faltered, the result would have been a moral and strategic disaster.⁷²

⁷⁰ Barnaby Mason, "World: Europe Analysis: 'Something Must be Done'," 5 October 1998. Available [Online]: <http://news.bbc.co.uk/hi/english/world/europe/newsid_185000/185197.stm> [3 March 1999].

⁷¹ Roger Cohen, "NATO Shatters Old Limits in the Name of Preventing Evil."

⁷² William Jefferson Clinton, "A Just and Necessary War," *New York Times*, 23 May 1999.

These words, enshrined as the "Clinton Doctrine" and advanced as an apologetic once the air strikes were under way, have supposedly become an integral part of America's foreign policy.⁷³

Thus, America's status as the alliance's Cold War leader was reasserted in this brave new era as it brokered the peace in Bosnia and now found itself once again on center stage in Kosovo. U.S. leadership is recognized by both Europeans and Americans as a necessity to avoid even more suffering and further stagnation, given the European Union's inability or unwillingness to act on its own.⁷⁴ Thus, as Diethard Prell of the *Nürnberger Zeitung* commented while the West was pondering what to do, "It will have to be the Americans who will once again show their European allies how a political criminal is brought to reason."⁷⁵ The need to turn to America for leadership is virtually axiomatic. As *TAZ* reporter Reinhard Mutz notes, when politics and diplomacy came to wit's end, the United States threatened air strikes and fifteen reluctant NATO partners

⁷³ Roberts, "A Superpower's Dilemma," 32-33. Roberts notes that when Clinton was asked by CNN if there was a Clinton Doctrine, the president eagerly responded by saying that whenever there is ethnic or religious conflict, "if the world community has the power to stop it, we ought to stop genocide and ethnic cleansing." A similar formulation was repeated in a speech to NATO troops on 22 June 1999 (Roberts, 33-34). Interestingly, the wording had changed from "must try" to "ought" and, though the difference may be unimportant, one cannot help but wonder whether the fervor of the doctrine as composed during the Kosovo crisis and uttered as an apologetic for the air campaign has not been watered down in the face of victory. A "must try" has the force of an actual attempt whereas a mere "ought," while indicating the importance of the action and providing an imperative, leaves action as a desirable—even logical—consequence but does not necessarily produce enforcement or even an attempt thereof.

⁷⁴ "Bonner Diplomaten über Holbrooke verärgert," 12 November 1998. Available [Online]: <<http://www.kosova-info-line.de/kil/pressestimmen-322.html>> [2 March 1999].

⁷⁵ Diethard Prell "Wenn Papiertiger brüllen," 10 September 1998. Available [Online]: <<http://www.kosova-info-line.de/kil/kommentare-36.html>> [1 March 1999].

showed their solidarity by following in line.⁷⁶ President William Clinton's remark illustrates America's leadership in light of NATO's stance against Milosevic: "Our allies are with us."⁷⁷

Yet, the question remains, in what precisely were the allies "with us"? In a speech given shortly after the ACTORD was signed, President Clinton provided the answer:

All along, our objectives have been clear, to end the violence in Kosovo which threatens to spillover into neighboring countries, and to spark instability in the heart of Europe, to reverse a humanitarian catastrophe in the making, as tens of thousands of homeless refugees . . . risk freezing or starving to death in the winter and to seek a negotiated peace.⁷⁸

This then was the rallying cry: a desire for stability in the region, lest the conflict spread and engulf more of Europe, together with the acute awareness that human suffering was reaching the proportions of a humanitarian disaster as winter approached. It was with reference to the latter that U.S. Secretary of State Madeleine Albright justified the ACTORD's legality: "the alliance has the legitimacy to act to stop a catastrophe."⁷⁹

However, the legitimizing rationales propounded by each NATO ally were more complex than the simple formulation of avoiding a "catastrophe" would seem to indicate.

⁷⁶ Reinhard Mutz, "Warten auf den Krieg," 15 January 1999. Available [Online]: <<http://www.kosova-info-line.de/kil/pressestimmen-413.html>> [2 March 1999].

⁷⁷ "Clinton Says Allies Must be Firm on Kosov," *Bulletin Broadfaxing Network*, 2 October 1998. Available [Lexis/Nexis]: NEWS/ALLNWS [25 February 1999].

⁷⁸ "Text of Clinton's Statement on Kosovo," *Agence France Presse*, 13 October 1998. Available [Lexis/Nexis]: NEWS/ALLNWS [25 February 1999].

NATO seemed ill at ease to be merely acting to avoid a catastrophe. Thus, Albright, when pressed on the legality of the action, referred to existing UN resolutions—Resolution 1160 and especially Resolution 1199. Albright suggested that the requirements placed on Belgrade by the resolutions and the fact that the resolutions were based on Chapter VII of the UN Charter provided adequate basis for NATO military action.⁸⁰ Even President Clinton was quick to add that the actions by “NATO forces would be within the framework of UN decisions.”⁸¹ Diplomats themselves noted that “allied governments had started working on the legal basis for action.”⁸² Thus, the *International Herald Tribune* observes, “The justification will be based on numerous ways in which Mr. Milosevic has defied Security Council resolution 1199.”⁸³ However, Roger Cohen more accurately expressed the slipshod nature of the undertaking when he stated, “What NATO had done was to patch together a loose array of arguments.”⁸⁴ Ambiguity was permitted for the sake of apparent unity.

⁷⁹ “U.S. Tells NATO It’s Time to Use Force on Kosovo,” *International Herald Tribune*, 9 October 1998. Available [Lexis/Nexis]: NEWS/ALLNWS [25 February 1999].

⁸⁰ Madelein K. Albright, “Press Conference on Kosovo,” 8 October 1998. Available [Online]: <<http://secretary.state.gov/www/statements/1998/981008.html>> [12 November 1999]. Interestingly, it would be German Foreign Minister Klaus Kinkel who would point out the legal fallacy of this line of reasoning. (See “Germany” starting on page 52 of this thesis).

⁸¹ “U.S. Tells NATO It’s Time to Use Force on Kosovo.”

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Roger Cohen “NATO Shatters Old Limits in the Name of Preventing Evil.”

However, the stagnation of effort followed by an increasingly intense bombing campaign, its operational guidelines dictated by a virtual "no NATO casualty" policy, only serves to highlight the superficiality of the Alliance's apparent unity. As Rieff observes, "The fact that while the NATO powers are often willing to intervene they have also shown themselves almost never willing to take casualties suggests that this commitment is as much about having fallen into a rhetorical trap as about being guided by a new moralizing principle."⁸⁵ The fulcrum actor and chief craftsman of NATO policy laid out a legitimizing rationale that could not, did not, and cannot, support the weight placed on it. America's European allies merely followed suit.

C. BRITAIN

The British posture in regards to Kosovo may best be described by a popular phrase circulating through the media: "The British are back doing the bulldog thing." In fact the formulation of what this phrase implies is reducible to the following refrain: the Clinton administration has said this or that is non-negotiable, and surely this viewpoint is "also expressed by Prime Minister Tony Blair of Britain."⁸⁶ It is part of the special relationship between the two nations that seems to give Britain the resolve to lambaste its

⁸⁵ Rieff, "A New Age of Liberal Imperialism," 2.

⁸⁶ Philip Shenon, "U.S. Says Kosovo Rebels Are Ready to Sign Peace Pact," 9 March 1999. Available [Online]: <<http://www.nytimes.com/library/world/europe/>> [9 March 1999].

fellow Europeans when they do not fall in line with the "tough stance made by London and Washington against the Yugoslav president."⁸⁷

Yet, this is not to suggest that Britain is a mere American puppet. The British have repeatedly played the human rights card, more so than any other of their European neighbors. To some degree this may have derived from the desire of the British to regain their prestige and place of leadership after alienating their European colleagues in September 1998 with their handling of the EU's flight restriction agreement against JAT, the Yugoslavian airline. It was during this incident that Britain chose to make a bilateral arrangement with Belgrade, thereby making the bitterly won EU agreement a farce. The backlash was severe, and some commentators and politicians demanded an investigation into the possibility of leveling charges against Britain in the EU court.⁸⁸ Yet, the situation was quickly forgotten in light of the escalation of the Kosovo crisis in September 1998, and Britain was quick to absolve itself of any charges of foot-dragging by advocating action all the more adamantly, thus regaining its image as a defender of the moral high ground.

It is worth emphasizing that this latter title is no mere label. As the British *Strategic Defense Review* boldly asserts, "We have a responsibility to act as a force for

⁸⁷ Tim Butcher and Joe Hibbs, "International: Blair attacks West's Disunity on Kosovo," *The Daily Telegraph* (London), 9 October 1998. Available [Lexis/Nexis]: NEWS/ALLNWS [25 February 1999].

⁸⁸ See Diethard Prell, "Wenn Papiertiger brüllen" and Peter Münch, "Diplomatische Flachflieger," 11 September 1998. Available [Online] <www.kosova-info-line.de/kil/kommentare-37.html> [1 March 1999].

good in the world.”⁸⁹ Specifically, this key document points out that “instability inside Europe, as in Bosnia, and now Kosovo, threatens our security. Instability elsewhere—for example in Africa—may not always appear to threaten us directly. But it can do [so] indirectly, and we cannot stand aside when it leads to massive suffering.”⁹⁰ Britain is to be an advocate of “human rights and democracy the world over.”⁹¹ Thus, in language similar to Mrs. Albright’s comments, Prime Minister Blair declared with regard to the Kosovo crisis, “In order to avert a humanitarian catastrophe the West will act, we will act—and we will.”⁹²

As for the rationale legitimizing such a posture, the British pursued a two-pronged strategy. The effect, however, rather than firming Britain’s foundation, served only to show the need for the establishment of clear guidelines by the international community in regards to human rights in general and, specifically, intervention on their behalf. Thus, as one diplomatic correspondent observed in light of the October 1998 discussion surrounding the ACTORD, “The British evidently believe, though they do not say so explicitly, that last month’s resolution invoking Chapter VII of the UN Charter [UN

⁸⁹ *The Strategic Defense Review* (London: The Stationary Office, July 1998), p. 7.

⁹⁰ *Ibid.*, p. 5.

⁹¹ *Ibid.*, p. 6.

⁹² Michael Clarke, “Last Gasp Deal Halts Bombing—Blair hails Yugoslav Agreement but Warns Attack Threat Stays,” *Evening Chronicle*, 13 October 1998. Available [Lexis/Nexis]: NEWS/ALLNWS [25 February 1999].

Resolution 1199] provides authority enough.”⁹³ Yet, in House minutes dated 14 December 1998, the first qualifiers to this simple answer begin to appear and point out that evidently the resolution was not enough. The Parliamentary Under-Secretary of State, Baroness Symons of Vernham Dean, stated:

Cases have arisen (as in northern Iraq in 1991) when, in the light of all the circumstances, a limited use of force was justifiable in support of purposes laid down by the United Nations Security Council, but without the council’s express authorization when that was the only means to avoid an immediate and overwhelming humanitarian catastrophe. These cases are exceptional. . . . The important point is that all NATO operations must have a proper basis in international law. . . . this need not always be a United Nations Security Council resolution. The legal basis in any particular case is bound to depend on the circumstances. We have to judge each case on its merits and act accordingly.⁹⁴

In attempting to identify this “proper basis in international law,” the Baroness did not refer to the UN Charter or UNSC Resolution 1199, seemingly indicating the lack of basis they provided. Rather she resorted to such pillars of international law as “circumstances at the time” and “humanitarian necessity” and noted, “The legal basis for the use of force can only be considered in the light of all the circumstances at the time. In the exceptional circumstances of Kosovo it was considered that the use of force would be justified on the

⁹³ Barnaby Mason, “World: Europe Analysis: ‘Something Must be Done.’”

⁹⁴ Great Britain, Parliament, House of Lords, Hansard, 14 December 1998, columns 1220-21.

grounds of overwhelming humanitarian necessity, without Security Council authorization.”⁹⁵

If these are pillars, then they are only pillars of salt. The lack of support they provide has led in large measure to the stagnation of efforts in Kosovo. Furthermore, despite the insistence that such instances as Kosovo are the exception, the facts indicate that they are becoming more frequent as regional flare ups, resulting in human suffering, mark the post-Cold War world. The use of the term "exceptional" also seems odd given Britain's objective of being a "force for good in the world." Nonetheless, these considerations are tangential to the present undertaking of simply illuminating the legitimizing rationales expounded by the British. Hence London seemed satisfied to emphasize human rights as the foremost rationale despite the scarcity of precedents for humanitarian intervention in international law—the coalition's intervention in northern Iraq in 1991 notwithstanding.

Finally, it must be noted in regard to Britain that, though human rights were a dominant legitimizing rationale, what can be defined as more practical considerations factored in as well. It would seem that Britain is not simply content with being "America's bulldog" but desires leadership in the European Union. The Franco-British Summit of 4 December 1998 produced the unprecedented "Joint Declaration on European Defense" as a move towards Europe taking charge of its own affairs. The "European

⁹⁵ "Serbia: Legal Basis for the Use of Force," Written Answers, Great Britain, Parliament, House of Lords, Hansard, 2 November 1998, 11.

Union needs to be in a position to play its full role on the international stage.”⁹⁶ Only with a united Europe and a united international community which “faces up to its responsibilities,” British commentators argue, will Milosevic—or for that matter any future tyrant—abandon his policies of repression and replace his antagonism with cooperation.⁹⁷ It seems that Britain truly is “doing the bulldog thing” again—but increasingly as its own master.

D. GERMANY

If Britain is on a quest to assert itself boldly, Germany may best be described as the reluctant power seeking its identity within the European community. Hence, in light of the Kosovo crisis, the German government in October 1998 took “a strong line in favor of military action if necessary.”⁹⁸ The juxtaposition of the words “strong line” and “if necessary” reflects Germany’s uncertainty about itself as well as the political division within Germany. As the ACTORD was being decided, Germany was undergoing a change of government, and though the hand-off from the outgoing Chancellor, Helmut Kohl, to the incoming Chancellor, Gerhard Schröder, went relatively smoothly, with both agreeing to back NATO’s policy, Schröder’s new coalition government seethed with discontent.

⁹⁶ “Franco-British Summit Joint Declaration on European Defense,” 4 December 1998. Available [Online]: http://www.france.diplomatie.fr/cgi-bin/go_doc.pl?type=bull&cible=du_jour.gb.html [4 December 1998].

⁹⁷ Butcher, “International.”

⁹⁸ Mason, “World: Europe Analysis.”

The now classic formulation throughout the West of agreeing that a humanitarian catastrophe was in the making yet not agreeing upon the legitimization for action nor what the nature of that action should entail holds especially true in the case of Germany. Hence, in September 1998, the outgoing German Foreign Minister, Klaus Kinkel, argued that above all else the potential humanitarian catastrophe of the many Albanians who found themselves without shelter as the winter approached had to be avoided.⁹⁹ Although this view was widely shared by Germans regardless of party affiliation, the agreement upon means to attain that end remained elusive. For the extreme Greens (*Fundis*), any solution required a UN mandate specifically stating what should be done and how.¹⁰⁰ In contrast, Schröder took a “more flexible line.”¹⁰¹ This flexible position, which enjoyed the support of the Green Foreign Minister Joschka Fischer as well as other members of the ruling coalition, maintained that UNSC Resolution 1199 provided a sufficient legal foundation for possible NATO air strikes.¹⁰²

Moreover, little disagreement from the new government’s party heads was voiced with regard to Kinkel’s argument for intervention to avoid the “humanitarian catastrophe which approaches with winter:” “This is a case in which international law exceptionally

⁹⁹ Erich Rathfelder, “Menschliche Tragödie,” 15 September 1998. Available [Online]: <http://www.kosova-info-line.de/kil/kommentare-38.html> [1 March 1999].

¹⁰⁰ “Kanzler hält Bodeneinsatz in Kosovo für möglich,” 25 January 1999. Available [Online]: <http://www.kosova-info-line.de/kil/pressestimmen-444.html> [2 March 1999].

¹⁰¹ Mason, World: Europe.”

¹⁰² “NATO-Einsatz: Bundestag für Teilnahme,” 16 October 1998. Available [Online]: <http://rhein-zeitung.de/on/98/10/16/topnews/buwehr.html> [3 March 1999].

authorizes a military strike to avert an imminent humanitarian catastrophe after all civilian means have failed.”¹⁰³ The statement received further support from Günter Verheugen, an SPD foreign affairs expert: “Intervention with the sole purpose of preventing or ending a human catastrophe in Kosovo would be covered by the existing resolution 1199.”¹⁰⁴ In short, the assertiveness of Schröder’s remarks after a meeting with Clinton about the ACTORD seemed clear and decisive: “Our threats are not only pretense. If UN Resolution 1199 is not fulfilled, things will get serious.”¹⁰⁵ Yet, this simple statement contained a host of vagaries, as subsequent debates in Germany made all too clear.

In part, the problem rested with Schröder’s willingness to not clearly distinguish between the will of NATO and that of the international community. Hence, when questioned on the involvement of German forces in Kosovo, Schröder noted that Germany would be part of any decision made by NATO. Yet when asked in a follow up question about the use of German ground troops in potentially hostile situations, he replied that Germany would act in accordance with the will of the “international community” and so nothing could be ruled out.¹⁰⁶ Of course the replacement of the term

¹⁰³ Kinkel quoted in Michael Adler, “Germany Approves NATO Operation Against Serbs,” *Agence France Presse*, 21 October 1998. Available [Lexis/Nexis]: NEWS/ALLNWS [25 February 1999].

¹⁰⁴ “Schröder and Kohl Meet on Kosovo Crisis,” *Deutsche Presse-Agentur*, 8 October 1998. Available [Lexis/Nexis]: NEWS/ALLNWS [25 February 1999].

¹⁰⁵ Schröder quoted in Adler, “Germany Approves NATO Operation.”

¹⁰⁶ “Kanzler hält Bodeneinsatz in Kosovo für möglich.”

“NATO” with the “international community” may have been unintentional. However, a more careful analysis reveals that such an exchange merely reflected the confusion and tug-of-war that raged within Germany between moral and legal criteria.

At the heart of Germany’s to-and-fro struggle rested an uneasiness pervasive throughout the alliance, though it was most clearly expressed by Kinkel. In the autumn of 1998, he declared himself unsatisfied with the U.S. and British arguments by noting what everybody knew but attempted to ignore, “The reference to Chapter VII in Resolutions 1160 and 1199 was insufficient in that Russia and China both had accompanied their votes by legally valid declaratory statements spelling out that the resolutions should not be interpreted as authorizing the use of force.”¹⁰⁷ However, Kinkel’s attempt to devise an alternative legitimization proved unsuccessful. Schröder and his coalition government chose to follow the general drift in NATO. Hence, at once Schröder argued that NATO, by referencing UNSC Resolution 1199, was not giving “itself a mandate,” but was “acting within the reference framework of the United Nations.” At the same time, he reasserted the “UN monopoly on the use of force and the responsibility of the Security Council for the preservation of world peace and international security.”¹⁰⁸

¹⁰⁷ Kinkel quoted in indirect discourse in Catherine Guicherd, “International Law and the War in Kosovo,” *Survival* 41, no. 2 (summer 1999): 26. As Guicherd points out, “Indeed, on Resolution 1199 China had abstained on the ground that the text constituted encroachment on Yugoslavia’s sovereignty—thereby preventing any kind of action, military or otherwise—while Russia had pointed out that both resolutions stated that if they were not complied with, the Council would have to consider further action. No measures of force and no sanctions were being introduced at this stage by the Council” (26-27).

¹⁰⁸ “Schröder Addresses Bundestag on Kosovo,” ZDF Broadcast (16 October 1999). Translated by the Foreign Broadcast Information Service (FBIS WEU 98-289).

The subsequent comments by various politicians seem to further indicate that Schröder was walking a fine line between alienating either some of his constituents in Germany or his NATO allies, most importantly the United States. Angelika Beer of the Green faction remarked in regards to Schröder's comments that she did not think much of them given their ambiguity and vague formulation.¹⁰⁹ It was precisely this ambiguity in speech—a cloak barring clarity—that passed for diplomacy, and hence barred the way to any substantial progress in Kosovo. Schröder's emphatic words may have conveyed a disgust for the humanitarian catastrophe, but, in what they did not say, they entailed the reality of an unwillingness to get too deeply involved, especially not in the position of leadership. When one political commentator was interviewed on the subject of Kosovo and asked to comment on the leadership of the German government, he simply replied, "Eine überaus schwache Vorstellung" (an extremely weak performance).¹¹⁰

Germany then was a reluctant follower that remained supportive but that was assuredly not an initiator of action. As Schröder stated shortly after the ACTORD was signed, "We have no objections to the order to activate NATO troops. We will support everything that must be done so that the UN resolutions are fulfilled."¹¹¹ Yet even this support was less than a zealous affirmation. As the *Rhein-Zeitung* reported after the air

¹⁰⁹ "Grüne schliessen Kosovo-Einsatz nicht aus," 26 January 1999. Available [Online]: <http://www.kosova-info-line.de/kil/pressestimmen-445.html> [2 March 1999].

¹¹⁰ Peter Dausend, "Der Westen muss jetzt handeln," 19 January 1999. Available [Online]: <http://www.kosova-info-line.de/kil/kommentare-67.html> [2 March 1999].

¹¹¹ "Schröder Backs U.S. on Kosovo in Washington, Cabinet Approves NATO Mission," *The Week in Germany*, 16 October 1998.

strikes were averted in October 1998 following Holbrooke's eleventh hour deal, Schröder and Fischer were extremely relieved that the strikes had been delayed and, moreover, that it appeared that they might never take place.¹¹²

As the Kosovo crisis dragged on, resolve—if ever there was any—was further strained as more and more Germans began to question the effectiveness of air strikes even if they were to be authorized. As Hans Koschnik, Germany's Bosnian representative, commented of an ever increasing German sentiment, "Aus der Luft, mit Bomben, löst man keine Probleme" (Merely dropping bombs will not solve anything).¹¹³ Disinclined to get too deeply involved, the word choice of politicians reflected the prevailing mood of disgust coupled with helplessness: "Abscheu" (abhorrence).¹¹⁴

Yet, as one German political commentator observed, if that is the best Germany could do, namely to merely stand by and watch as ethnocide was committed in the Balkans and to let the sparks that could explode the powder keg of Europe keep burning, then Germany should also desist from its "holier-than-thou" criticisms.¹¹⁵ However criticism and boisterous posturing continued, for they disguised the truth that resolve was

¹¹² "NATO-Einsatz."

¹¹³ Barbara Oertel, "Solange die OSZE im Kosovo steht, braucht Milosevic nichts zu fürchten." Available <[Online]: <http://www.kosova-info-line.de/kil/pressestimmen-431.html>> [2 March 1999].

¹¹⁴ Werner Mergner, "Wie lange Dulden Wir noch die Greuel im Kosovo?" 19 January 1999. Available <[Online]: <http://www.kosova-info-line.de/kil/pressestimmen-422.html>> [2 March 1999].

¹¹⁵ Ibid.

lacking; and so the "heinous game of cat and mouse" continued in the Balkans.¹¹⁶ Still, when NATO finally decided to act under the leadership of America, the traditional response held true: "In Bonn [hebben] 500 ratlose Abgeordnete verschämt die Hand" (500 German delegates in Bonn, embarrassed and at wit's end, lifted their hands in "agreement").¹¹⁷

E. FRANCE

While Britain insistently claimed the high moral ground and Germany reluctantly followed in the footsteps of NATO, France strove for the privileged position of leadership, all the while fearful of where it might lead. For a country seeking the grandeur of the France that once stood at Europe's helm, the ending of the Cold War offered incredible opportunities. Yet, the fact remains that France is not the great power it once was and its neighbors are quick to rebuff the swaggering dauphin if he becomes too haughty. The nation that would lead is reluctantly learning that at times it must be led. As Professor David Yost has observed of France:

The long-standing dilemma in French defense policy has been reconciling traditions of national autonomy with the necessity for cooperation with allies. In the current international context, deepened cooperation in European and (if necessary) Atlantic frameworks appears essential on pragmatic grounds.¹¹⁸

¹¹⁶ "Germany Approves NATO Strikes—Recalls Parliament," *Agence France Presse*, 12 October 1998. Available [Lexis/Nexis]: NEWS/ALLNWS [25 February 1999].

¹¹⁷ Mutz, "Warten auf den Krieg."

¹¹⁸ David Yost, "France," in *The Defense Policies of Nations: A Comparative Study*, 3rd ed., ed. Douglas J. Murray and Paul R. Viotti (Baltimore and London: The John Hopkins University Press, 1994), p. 271.

The importance of the pragmatic in French politics is central, for relatively little is found in official French sources with regard to the atrocities and human rights violations and much more with regard to legal considerations. Hence, in February 1999, Alain Richard, the Defense Minister, argued:

We remain firmly attached to the legitimacy for any non-Article 5 operation implying recourse to force provided by the authority of the United Nations Security Council, the sole legitimate and indisputable organ for a resort to force and for effecting a delegation [of authority to use force] to a regional organization.¹¹⁹

Hence, the French government had "approved the NATO strike order for Kosovo because Yugoslavia had failed to comply fully with the UN demands."¹²⁰ The reasoning was simple and pragmatic.

The humanitarian question, which NATO officials conceded was "decisive" in authorizing the ACTORD,¹²¹ was for the French an extreme and exceptional legitimization. As Richard was quick to remark in regards to Kosovo and the flexibility of the UN resolution, "We have in this case reached the extreme limits of this flexibility, and on an exceptional basis, because it concerned a case of humanitarian necessity."¹²² Firmly holding out as long as possible for a UNSC resolution that clearly authorized

¹¹⁹ Alain Richard à l'occasion de la 35ème conférence sur la politique de sécurité, Munich, 6 February 1999.

¹²⁰ Ibid.

¹²¹ Roger Cohen, "NATO Shatters Old Limits in the Name of Preventing Evil."

¹²² Alain Richard.

force, the French finally and reluctantly agreed to the ACTORD based on the existing resolution. As the French foreign ministry rather coldly commented, "France wants to contribute by its actions and its initiatives to a lasting settlement to this crisis."¹²³

As the bombs finally began to fall in March 1999, the French rationale held steady. As Lionel Jospin, the Prime Minister, then declared, "Military intervention was imperative, because the irrationality of the Yugoslav regime left no other choice, [and] because we could not resign ourselves to impotence. . . . once the [UN Security] Council was not in a position to act . . . , [and] once there was an emergency, it was up to us to assume all our responsibilities, notably within the Atlantic Alliance."¹²⁴

In light of previous official comments and inaction and given NATO's imminent fiftieth anniversary summit in April, one might wonder whether the word "emergency" referred more to NATO's floundering credibility or the escalating humanitarian catastrophe. Still, France took on its "responsibility," notably, as Jospin stated (seemingly unwilling to leave any room for doubt) "within the Atlantic Alliance": only by being led did France maintain the possibility of leading.

In fact, it was out of a desire to retain a position of leadership that France volunteered to head the multi-national evacuation force sent to Macedonia as guarantors

¹²³ "France Approves NATO Strike Order for Kosovo." *Agence France Presse*, 13 October 1998. Available [Lexis/Nexis]: NEWS/ALLNWS [25 February 1999].

¹²⁴ Lionel Jospin, statement to the National Assembly on 26 March 1999, *Journal Officiel de la République Française, Débats Parlementaires, Assemblée Nationale*, 2969-2972. See also Claire Tréan, "Les résolutions de l'ONU donnent une base légale à l'intervention," *Le Monde*, 28-29 March 1999, 6.

for the safety of the OSCE verifiers in Kosovo.¹²⁵ It was with a similar thought in mind that France signed the Joint Declaration of European Defense with Britain and stated that France was "ready to consider any military action, with their partners and in the framework of the Atlantic Alliance, including sending ground troops required to accompany a negotiated settlement."¹²⁶ Again, conspicuously absent were any references to the atrocities being committed or to the potential instability that might have resulted for the rest of Europe. Hence, even though the French government described Kosovo as a high risk situation after the failed conference at Rambouillet, President Chirac specifically addressed only his concerns that Kosovo should not be granted independence and that Yugoslavia should accept the supervision of NATO troops in Kosovo.¹²⁷

Yet, in the end, French pragmatism differed little from British moralizing or German trepidation with respect to the disinclination to get too deeply involved. One French officer expressed his view on being part of the extraction force stationed in Macedonia by saying that he was happy to be part of the force but hoped that it would never be called upon.¹²⁸ Leading without truly desiring grave responsibility, and fearful

¹²⁵ "Schatten über Frankreichs Balkankurs," 6 November 1998. Available [Online]: <<http://www.kosova-info-line.de/kil/pressestimmen-316.html>> [2 March 1999].

¹²⁶ Craig R. Whitney, "NATO Says It's Ready to Act to Stop Violence in Kosovo," 29 January 1999. Available [Online]: <<http://www.nytimes.com/library/world/europe/012999kosovo-nato.html>> [9 March 1999].

¹²⁷ "Frankreich warnt vor 'hochriskanter Situation' im Kosovo," 2 March 1999. Available [Online]: <www.kosova-info-line.de/kil/pressestimmen-537.html> [2 March 1999].

¹²⁸ David Rieff, "Das Kosovo-Spektakel," 3 December 1998. Available [Online]: <<http://www.kosova-info-line.de/kil/pressestimmen-349.html>> [2 March 1999].

of where they might be led, the French opted for legalistic pronouncements for as long as they could.

In this regard, it is also worth noting that France's reluctance to lead in Kosovo parallels the lack of overt criticism on the part of France regarding Milosevic's behavior during the Kosovo crisis. In part, these tendencies stem from France's traditional sympathy for its former Serbian ally—a common sentiment until the end of Mitterrand's era.¹²⁹ However, the argument that latent sympathies may still exist received renewed fuel with the reports that French Major Pierre-Henri Bunel had passed on NATO secrets to Serbian agents.¹³⁰ Although the French government denounced the situation as an isolated case, German and Austrian newspapers were quick to question France's national integrity. The *Züricher Zeitung* commented that though American leadership was not ideal, Europeans had reconciled themselves to it, and—almost as an afterthought—French spies were being kept out.¹³¹ In the end, France has had to reconcile itself to lead within a framework in which it is often only a follower. As Chirac simply stated, "France will participate in all operations."¹³² When the bombing began, France's operational role was second only to that of the United States.

¹²⁹ "Schatten über Frankreichs Balkankurs."

¹³⁰ Ibid.

¹³¹ "Ungebrochenen Gewaltbereitschaft in Kosovo," 14 November 1998. Available [Online]: <<http://www.kosova-info-line.de/kil/pressestimmen-325.html>> [2 March 1999].

¹³² "France Ready to Put in Ground Troops in Kosovo," *Agence France Presse*, 8 October 1998. Available [Lexis/Nexis]: NEWS/ALLNWS [25 February 1999].

F. THE WEST

Taken individually, one may be led to point the proverbial finger at this or that actor and this or that fault. Yet, each state's policies were not formulated in a vacuum nor were they formulated solely in relation to the United States or merely to each other. Rather, the Kosovo policy of the West was formulated in relation to all the various actors and issues involved, including those not addressed in the above analysis. To appreciate the rationalizing that not only led to the approval of the ACTORD but also the resulting stagnation, followed by muddled action, it is worthwhile to briefly consider the West collectively and some of the dominant considerations which shaped its policy—or lack thereof.

1. NATO and UN Unity . . . Appearance vs. Reality

Immediately apparent from the examination above is the lack of unity of the Western powers. As one political commentator observed, the only real problem in relation to conducting a military intervention in Kosovo was “der Mangel an einem politischen Konzept und dem politischen Willen des Westens” (the lack of a unifying concept and the lack of a political will).¹³³ As Reporter Reinhard Mutz so succinctly states, “Die Kosovo-Krise zeigt: Europa ist geographisch eine Einheit, politisch ohne Stimme, ohne gemeinsames Konzept und ordnende Hand” (The Kosovo Crisis illustrates

¹³³ Karl-Peter Schwarz, “Stoppt das Massaker!” 2 October 1998. Available[Online]: <<http://www.kosova-info-line.de/kil/kommentare-43.html>> [1 March 99]

that Europe is geographically an entity, politically without a voice, without a common and unifying concept, and without an ordering power).¹³⁴

In this regard, the view that the OSCE could relieve NATO as a crisis manager is an absurd notion.¹³⁵ Paraphrasing commentator Viktor Hermann, although Europe is an economic giant, it seems powerless to achieve a common political front, let alone the military cooperation to address the Kosovo situation.¹³⁶ Specifically in reference to the signing of the ACTORD, commentator Andreas Schwarz observed that what was presented as a breakthrough in consensus building was in reality only an agreement on the slimmest basis of fifteen different foreign policies. The truth of this fact was apparent when the use of force was threatened: opinions began to sharply diverge about what should be done and how.¹³⁷ The reality remained that NATO lacked solidarity. Some

¹³⁴ Reinhard Mutz, "Warten auf den Krieg."

¹³⁵ Dausand, "Der Westen."

¹³⁶ Viktor Hermann, "Die Europaer müssten selbst für Ordnung in den Hinterhöfen sorgen," 23 January 1999. Available [Online]: <<http://www.kosova-info-line.de/kil/pressestimmen-443.html>> [2 March 1999]. The original quote states, "*Der Wirtschaftsgigant Europa aber wird auf sich allein gestellt kaum die Kraft aufbringen, eine gemeinsame politische Front zur Befriedung des Kosovo aufzustellen—geschweige denn eine militärische.*" Nigel Rodley similarly notes that the "CSCE is not a legal entity, that none of its principal instruments (Helsinki Final Act, Vienna Concluding Document, Document of the Moscow Meeting) envisages the relevant powers of intervention" (Rodley, 25).

¹³⁷ Andreas Schwarz, "Die europaischen Mister," 07 September 1998. Available [Online]: <<http://www.kosova-info-line.de/kil/dokumentare-34.html>> [1 March 1999]. Schwarz's reference to fifteen different foreign policies requiring integration seems odd given the fact that in October 1998, NATO had sixteen members, and since 12 March 1999, with the addition of Poland, Hungary, and the Czech Republic, it has had nineteen members.

Europeans desired to protect Serbia (*Serben-Schutzpartei*), while others backed and followed the Americans (*Gefolgschaft der Amerikaner*).¹³⁸

A similar situation prevailed in the UN and on a much larger scale given the number of actors and the numerous interests they represented. The sheer number of overlapping and conflicting organizations and actors which had their fingers in Kosovo, including NATO, the UN, the Balkan Contact Group, the OSCE, the Kosovo-Albanians and the Serbs, made stagnation seem almost a natural consequence. In fact, among the numerous variables, Milosevic was, ironically, the only constant. His salami tactic of brutally subjugating Kosovo a piece at a time furnished the backdrop to his success in playing the Western powers off one another.

2. UN Resolution 1199

It was in this chaotic crucible that UNSC Resolution 1199 and the ACTORD were forged. The former was no more a hallmark of consensus than the latter. As Peter Münch has observed, Resolution 1199 was not an expression of a unified will of the international community but rather the bruised fruit of political haggling.¹³⁹ In fact, Thomas Chorgherr, a commentator for *Die Presse*, referred to an unholy alliance (in contrast to the Holy Alliance of the Congress of Vienna) of Russia, China, and, at times, France, which protected Milosevic in the UN General Assembly and, moreover, in the

¹³⁸ Bettina Vestring, "Die Europaer sind gespalten," 23 January 1999. Available [Online]: <http://www.kosova-info-line.de/kil/pressestimmen-440.html> [2 March 1999].

¹³⁹ Peter Münch, "Warning ohne Wirkung," 24 September 1998. Available [Online]: <http://www.kosova-info-line.de/kil/kommentare-41.html> [1 March 1999].

Security Council.¹⁴⁰ Truly, the Resolution itself was a "Warnung ohne Wirkung" (a warning without effect).¹⁴¹ As Rieff notes, "Time and time again, our moral ambitions have been revealed as being far larger than our political, military, or even cognitive means."¹⁴²

3. The ACTORD

It was upon the shaky foundation of Resolution 1199, the supposed cornerstone of international solidarity, that the ACTORD based its legitimacy in large measure. It should be no surprise that much confusion and disagreement surrounded it. Hence, some scholars and pundits looked at the matter legally and questioned the legitimacy of the order on grounds of national sovereignty and asserted that there existed no clearly delineated legal precedent for intervening militarily in the sovereign borders of another state.¹⁴³ Hence, the allies were not unwarranted in their "uneasiness over the precedent being set."¹⁴⁴ British Prime Minister Tony Blair argued in a speech given to the Economic Club of Chicago even as the bombing campaign was well under way, "If we want a world ruled by law and by international co-operation then we have to support the

¹⁴⁰ Thomas Chorrherr, "Die Welt, die Moral und das Gewissen," 21 November 1998. Available [Online]: <<http://www.kosova-info-line.de/kil/pressestimmen-338.html>> [2 March 1999].

¹⁴¹ Münch, "Warnung ohne Wirkung."

¹⁴² Rieff, "A New Age of Liberal Imperialism?" 3.

¹⁴³ Josef Kirchengast, "Das Ende des Selbstbetrugs," 20 January 1999. Available [Online]: <<http://www.kosova-info-line.de/kil/pressestimmen-427.html>> [2 March 1999].

¹⁴⁴ Roger Cohen, "NATO Shatters Old Limits in the Name of Preventing Evil".

UN as its central pillar.”¹⁴⁵ Uttering these words during NATO’s air campaign, which was not explicitly authorized by the UNSC, implied not only a measure of irony but reflected the uneasiness pervasive throughout the alliance.

This conundrum only substantiates the need to reexamine the foundations and ensure that they are firmly set. Such reflections would bring to the fore the philosophical principle that law is but an instrument of justice. As political commentator Karl-Peter Schwarz reflects philosophically, the line of argumentation that upholds sovereignty as inviolable would seem to suggest that ethnocide is permissible simply because it is an “internal affair” of Yugoslavia. The logical conclusion would be to grant states a blank check to murder their own citizens at their leisure.¹⁴⁶ Yet such refined philosophical thinking is the exception. The BBC more accurately captured the prevailing sentiment when it observed that, though there were “doubts about whether air strikes would work,” reports of “atrocities against ethnic Albanian villagers in Kosovo . . . made such arguments irrelevant for most people.”¹⁴⁷ The danger with such “thinking” is that it is precisely not thinking but emotional outrage that is driving the process and to which the media so often caters. It lacks a long-term vision of political order. Once the emotion dissipates, the resolve to act dissipates as well until a new horror jars the emotions.

¹⁴⁵ Tony Blair, “Doctrine of the International Community,” 28 September 1999. Available [Online]: <http://www.fco.gov.uk/text_only/news/speechtext.asp?2316&printVersion=yes> [12 November 1999].

¹⁴⁶ Karl-Peter Schwarz, “Stoppt das Massaker!”

¹⁴⁷ Mason, “World: Europe Analysis.”

Even when thinking is involved, little will exists to clearly define the guidelines. This held true in NATO's intervention in Kosovo; it should not be allowed to hold true for any future engagements. In the Kosovo crisis, improvisation became policy and that once again raised the question of legitimacy. The reasoning of Javier Solana, NATO's Secretary General, was precisely such an example of improvisation: "We think there are cases in which, acting on the spirit and the philosophy of the UN charter, we have to act to prevent a situation like the one we have now."¹⁴⁸ The answer would be acceptable if a shared vision of the philosophy and spirit of the UN were common currency. This was and is undoubtedly not the case. Though both the UN Charter and the Universal Declaration of Human Rights address the matter of such rights, their guidelines are vague and, therefore, parties can profess to agree without actually agreeing.

Hence, in the case of Kosovo, unity was achieved through ambiguity, allowing each nation to justify the document in light of its national interests and objectives.¹⁴⁹ Although politically expedient in the short term, the lack of unity in actually implementing the ACTORD indicated the danger of such "expedient" methods. Solana's statement, with respect to the signed ACTORD, at once said everything and nothing: "The allies believe that in the particular circumstances with respect to the present crisis in Kosovo as described in UNSC Resolution 1199, there are legitimate grounds for the

¹⁴⁸ "A Question of Credibility," *Financial Times*, 10 October 1998. Available [Lexis/Nexis]: NEWS/ALLNWS [25 February 1999].

¹⁴⁹ Prof. Ove Bring, reflecting on the intervention, notes that "there was no consolidated NATO position, but . . . it was up to the governments and capitals of the participating member states to assess the

alliance to threaten, and if necessary, to use force.”¹⁵⁰ What particular circumstances? What precisely is the nature of the present crisis? What are the legitimate grounds?

These questions remained unanswered by Solana, and when finally asked, received a host of conflicting and divergent answers. Diethard Prell noted in his commentary entitled, “When Paper Tigers Roar,” that the Allies had announced with fanfare that they had arrived at an agreement for conducting ground and air operations in Kosovo—“Gerade so, also ob man die Absicht hätte, sie auch anzuordnen” (as if they actually had the intention of carrying them out).¹⁵¹ Although Prell's cynicism is blatant, it is difficult to dispute its appropriateness given the relief among the NATO allies when the ACTORD was not immediately implemented.

4. ACTORD Implementation

When the ACTORD finally was implemented, it set a dangerous precedent even as it failed to meet its original objectives. According to prevailing legal interpretations, NATO, an alliance composed of members of the UN, should have sought explicit UNSC authorization for the use of force—all the more so given Russia's and China's addenda to UNSC Resolution 1199. However, such an “insistence on a Security Council mandate in this crisis would have meant Russian and Chinese vetoes, thus guaranteeing Milosevic a

international law situation and produce the justification(s) they saw fit.” (Bring, “Should NATO Take the Lead in Formulating a Doctrine on Humanitarian Intervention?” *NATO Review*, Autumn 1999, 24).

¹⁵⁰ “NATO: Secretary General's Press Conference,” *M2 Presswire*, 13 October 1998. Available [Lexis/Nexis]: NEWS/ALLNWS [25 February 1999].

¹⁵¹ Prell, “Wenn Papiertiger brüllen.”

free hand from the beginning.”¹⁵² Furthermore, it was generally agreed that outside of NATO “no other institution—neither the United Nations, nor the European Union, nor the Organization for Security and Cooperation in Europe—was capable of military heavy lifting.”¹⁵³ It was, therefore, a choice between acting on controversial legal grounds to end a moral horror or being thwarted by a split Security Council. Although NATO chose the former course, the precedent set—if it can be so regarded—rests on precarious legal grounds and is in dire need of clarification.

In fact, the entire undertaking was beset with mistakes and should serve to illustrate what should not be done. In light of the Alliance’s fiftieth anniversary summit, the allies “felt compelled to demonstrate” solidarity.¹⁵⁴ NATO’s reputation was now at stake. As Thomas Moore, director of defense and foreign policy studies at the Heritage Foundation, observed several weeks into the bombing, “To pull out now would give Mr. Milosevic a great victory and open the way for further ethnic cleansing.”¹⁵⁵ NATO’s threats to use force led it into war, and the Allies were forced to prosecute it to salvage NATO’s reputation. The solidarity, however, was fickle. The ACTORD was implemented with the stipulation of never requiring ground troops in combat operations. The line of questioning that asked what NATO would do if the air strikes did not achieve

¹⁵² Peter W. Rodman, “The Fallout from Kosovo,” *Foreign Affairs* 78, no. 4 (July/August 1999): 48.

¹⁵³ Rodman, 46.

¹⁵⁴ Rodman, 45.

¹⁵⁵ Mindy Belz, “A War too Far,” *World*, 10 April 1999. Available [Online]: http://www.worldmag.com/world/issue/04-10-99/cover_1.asp [8 October 1999].

the desired outcome, namely the ending of the ethnic cleansing, was never pursued. Such a course would have led the Allies down the undesirable path they had precisely stipulated to be avoided.

However, if the West wanted to begin to attempt to resolve the Kosovo crisis, analysts observed, a humanitarian peacekeeping, possibly peacemaking, military action would be necessary to separate the factions. It was a widely shared view that such an undertaking would require more than the 30,000 troops needed in Bosnia and possibly for a longer period of time.¹⁵⁶ But, "Noch denkt niemand daran" (nobody has yet thought about that).¹⁵⁷ Milosevic was well aware of the Western alliance's disinclination to get involved with ground troops. "Sie scheuten bisher den Einsatz von Bodentruppen wie der Teufel das Weihwasser" (the West has shied away from using ground troops like the devil shies away from holy water).¹⁵⁸

There was some truth to the cynical view that Kosovo could burn just as long as the flames did not extend over the borders.¹⁵⁹ In fact, Edward Luttwak of the Center for Strategic and International Studies in Washington has argued that interventions merely prolong wars; therefore, it is best to leave minor wars that can be confined, such as the

¹⁵⁶ Dieter Schröder, "Müssen erst Hunderttausende sterben?" 19 January 1999. Available [Online]: <<http://www.kosova-info-line.de/kil/pressestimmen-423.html>> [2 March 1999].

¹⁵⁷ Ibid.

¹⁵⁸ Mergner, "Wie lange dulden wir noch."

¹⁵⁹ "Zum neusten Loesungsplan der Kontaktgruppe," 12 August 1998. Available [Online]: <<http://www.kosova-info-line.de/kil/kommentare-20.html>> [1 March 1999].

one in Kosovo, to burn themselves out.¹⁶⁰ A similar sentiment seemed inherent in the mood of the West Europeans as a whole; they wrung their hands and waited in hope that the nightmare would end so that they could all return to their real concerns.¹⁶¹ But it never did go away; such conflicts rarely do. As *The Economist* observes, "A fight to the finish may sometimes produce peace, but it will often be an unjust peace (and the first world war, the 'war to end all wars', showed what that can lead to). A just intervention, by contrast, if it produces a less unfair outcome, may, just may, produce a lasting settlement."¹⁶² In the case of Kosovo, though the intentions behind the intervention may be described as just, the Alliance never had a plausible political vision for the future of the region.

5. Air Strikes

Unwilling to let the war burn itself out but also unwilling to end it swiftly, the allies could only agree on air strikes. As Rieff astutely notes, the conflict revealed the fact that "NATO was willing to bomb but not—at least not before it was too late to prevent a second slaughter in the Balkans in a single decade—to take the kinds of military action that might have prevented the ethnic cleansing of almost the entire Kosovar population."¹⁶³

¹⁶⁰ Edward Luttwak, "Give War a Chance," *Foreign Affairs* 78, no. 4 (July/August 1999): 36-44.

¹⁶¹ Rieff, "Das Kosovo-Spektakel."

¹⁶² "Other People's Wars," 13.

¹⁶³ Rieff, "A New Age of Liberal Imperialism?" 7.

Criticism has correctly been leveled at NATO's conduct of the air campaign as an immoral undertaking. "Killing from beyond harm's way" was cowardly as well as illustrative of the lack of sacrifice that the allies were willing to make on behalf of the cause of human rights that they so loudly extolled.¹⁶⁴ General Klaus Naumann, Chairman of NATO's Military Committee, noted in an interview with CBS News after being questioned about the unwillingness to use ground troops in light of the fact that as of 4 May 1999, Milosevic had succeeded in removing 90 percent of the Kosovars from their homes, "I have to tell you once again that we have no reason at this point in time to change the strategy which is focused to some extent on the philosophy of our democracies that we should avoid casualties, we should avoid the loss of life."¹⁶⁵

NATO's hope rested in a quick victory without ground troops and without the loss of life—an idea Eliot Cohen has derided as "immaculate coercion."¹⁶⁶ As Mark Danner astutely points out, "Leaders who speak of 'moral imperatives' . . . should be held responsible for their words and for persuading their people that some causes, once

¹⁶⁴ See Josef Joffe, "Three Unwritten Rules of the Serbian War" (*New York Times*, 25 July 1999), R.W. Apple Jr., "On Killing from Beyond Harm's Way" (*New York Times*, 18 April 1999), Eliot Cohen, "What's Wrong with the American Way of War" (*The Wall Street Journal*, 30 March 1999), Mark Danner, "Kosovo: Meaning of Victory" (*The New York Review*, 15 July 1999, 53-54), and Michael Walzer "Kosovo" (*Dissent* (summer 1999): 5-7). Walzer's argument, based on moral philosophy, is especially poignant, "You can't kill unless you are prepared to die," (6). Mindy Belz expresses the America's present military policy aptly and in lay terms when she observes "the consumer mentality with which the United States and its allies make war: at discount prices and for a limited time only" ("A War too Far").

¹⁶⁵ General Klaus Naumann, Transcript of Press Conference, 4 May 1999. Available [Online]: <<http://www.nato.int/docu/speech/1999/s990504c.htm>> [5 June 1999].

¹⁶⁶ Cohen quoted in Rodman, "The Fallout from Kosovo," 47.

embraced, are worth the risk.”¹⁶⁷ Not surprisingly, though NATO eventually succeeded in bringing Milosevic to the negotiating table—a fact the allies heralded as victory—they quietly pushed to the side the truth of the underlying failure. As Danner notes, “It did not ‘stop armies,’ at least not for seventy-nine days, and it is a difficult argument to make that it saved lives—or at least that it saved Kosovar lives.”¹⁶⁸ In short, the alliance was not “‘favored by that fortune which loves the brave’ but by sheer luck.”¹⁶⁹

6. Rambouillet: The Failure in Retrospect

The failure of NATO’s “victory” begins and ends to a large extent with the Rambouillet Agreement. The negotiations themselves were an exercise in confusion: “Western diplomats practiced a statecraft that was ill-prepared, fumbling, and erratic.”¹⁷⁰ What is even more deplorable is that the air campaign, waged on behalf of the implementation of the Rambouillet Agreement, ended with an agreement which could well have been reached without the campaign. Although Milosevic was accused of war crimes and indicted by the International Criminal Tribunal for the Former Yugoslavia, he not only remains at large but in the end was accorded the right to negotiate. Rieff correctly notes:

And wars against war crimes, which is how Kosovo was presented at the beginning of Operation Allied Force, must

¹⁶⁷ Danner, “Kosovo: The Meaning of Victory,” 54.

¹⁶⁸ *Ibid.*, 53.

¹⁶⁹ Josef Joffe, “Three Unwritten Rules of the Serbian War.”

¹⁷⁰ Danner, “Kosovo: The Meaning of Victory,” 53.

either be waged as the Second World War was waged—that is, until unconditional surrender—or run the risk of seeming utterly pointless when, as in most noncrusading wars, a deal is struck between belligerents that leaves those who have previously been described as war criminals in power.¹⁷¹

Moreover, the victims on whose behalf the allies intervened seemingly suffered the most. The greatest failure of the alliance's intervention was that a war to stop ethnic cleansing had the main effect of intensifying it. As *The Economist* notes, "The bombing campaign accelerated the killing—no more than 2,000-3,000 people had died in the province before the bombing began." In the end, the tally indicated that perhaps as many as 100,000 Kosovars had been killed, "600,000 displaced within Kosovo, and 800,000 driven out." In humanitarian terms, "The Kosovo campaign turned into a disaster."¹⁷²

In fact, this disaster was only to be expected. As Eliot Cohen notes, the leaders of the Clinton Administration were "appallingly naive if they expected anything else."¹⁷³ William Safire correctly identified the precarious nature of the present policy prior to its implementation: "A new policy is being backed into by the Western world: if enough civilian lives are in danger of starvation or massacre, and if intervention by air power can make a difference—and if the US takes the lead—then an alliance of nations will reluctantly act to impose a temporary, de facto self-determination."¹⁷⁴

¹⁷¹ Rieff, "A New Age of Liberal Imperialism?" 5.

¹⁷² "Messy War, Messy Peace," *The Economist*, 21 June 1999, 15.

¹⁷³ Eliot Cohen, "What's Wrong with the American Way of War."

¹⁷⁴ Safire.

Still, such apparently haphazard "reasoning" is reminiscent of the Bosnian crisis, which resulted in the expression of a plethora of confused purposes and ultimately produced only a tenuous settlement. In the words of Carl Bildt, former European Union senior representative in Bosnia, the lack of Western decisiveness was "déjà vu in Kosovo."¹⁷⁵ Half-hearted intervention has assured that as Bosnia "festers 3½ years after the Dayton peace agreement," so too will Kosovo remain "a wasteland of hatred and ruin for years to come."¹⁷⁶

7. Kosovo: Exception or Precedent?

Still the question remains, is Kosovo an exception or a precedent?¹⁷⁷ One can only pray the answer is yes in both cases. To a large degree, the "exception" school is driven by some form of neo-isolationism. In Europe, for instance, the desire—largely on the part of France and Germany—to avoid another war has led to the creation and development of the European Union. Yet, with the ending of the Cold War, the Europeans, "instead of seizing the opportunities, and preparing to confront the dangers, that would arise from the end of communism in half of Europe," pursued the "perfecting the internal arrangements of an already well-functioning, peaceful and prosperous

¹⁷⁵ Bildt quoted in Steven Erlanger, "Has the West Learned From Mistakes in Bosnia?" 6 October 1998. Available [Online]: <<http://www.nytimes.com/library/world/europe/061098kosovo-us-assess.html>> [26 November 1998].

¹⁷⁶ George Melloan, "Air Power was Impressive, but is Kosovo a Victory?" *The Wall Street Journal*, 8 June 1999, A19.

¹⁷⁷ Rodman argues that the "Kosovo precedent validated an exception for 'humanitarian catastrophes,' perhaps hinting of future unconstrained NATO action in other, more geopolitical emergencies" (Rodman, 46). In contrast, *The Economist* argues that the "air war against Kosovo was a startling new departure—but one that is likely to prove the exception, not the rule" ("Sorting Out Kosovo," 16).

community of states in western Europe.”¹⁷⁸ In America, the onset of “intervention fatigue” in light of bungled interventions along with a questioning of America’s role as an international police man has been steadily adding strength to the neo-isolationists or the “America first” constituency. As Clinton pointed out to George Stephanopoulos in 1993, “Americans are basically isolationist.”¹⁷⁹

However ideologically comforting it may be, isolationism in any form is virtually impossible in an increasingly interconnected world. Yet, this interconnectedness, while bearing the fruits offered by increased trade and capital flow and allowing for the grand rhetoric of a new age of man and human rights, also bears the seeds of discontent. When this discontent erupts into violence, it tends to reverberate throughout the entire system if for no other reason than the media’s ability to focus popular attention while rightly asking what precisely is meant by this new age. In this sense, Kosovo is to be viewed as a precedent—not in the manner it was handled but rather because it addressed, albeit clumsily, the problem of “how to replace a chaotic post-Cold War disorder with some kind of order that does what it can to prevent both the worst sort of repression and ethnic cleansing.”¹⁸⁰ However, the establishment of such order is precisely what has yet to take place.

¹⁷⁸ Timothy Garton Ash, “Ten Years in Europe.”

¹⁷⁹ Clinton quoted in Danner, “Kosovo the Meaning of Victory,” 54.

¹⁸⁰ Rieff, “A New Age of Liberal Imperialism,” 9.

If one considers NATO's Strategic Concept unveiled on 24 April 1999, the dominant reference to intervention reads as follows:

NATO recalls its offer, made in Brussels in 1994, to support on a case-by-case basis in accordance with its own procedures, peacekeeping and other operations under the authority of the UN Security Council or the responsibility of the OSCE, including by making available Alliance resources and expertise. In this context NATO recalls its subsequent decisions with respect to crisis response operations in the Balkans.¹⁸¹

The reference to "subsequent decisions with respect to crisis response operations in the Balkans" is both opaque and ironic. The Alliance's "response operations," after all, reflected a lack of Alliance unity about the legal and political basis for the key decisions—the approval of the ACTORD in October 1998 and the initiation of air strikes in March 1999—as well as a lack of alliance will to effectively prosecute the intervention.

Yet, it is difficult to deny that human rights are on the international agenda in a way not seen before. If *Realpolitik* is still the dominant thought pattern, it is "restricted by and large to policymakers when they are out of public view."¹⁸² As Bernard Miyet, head of UN peacekeeping operations, observes, "I don't know one head of state of a democratic country who, when confronted with the news, editorials, TV coverage, can say, 'I don't care.'"¹⁸³ In this sense the political landscape has undergone a change in the past half century. Yet, the hour may pass as quickly as it has come if an incoherent and

¹⁸¹ North Atlantic Council, *Strategic Concept*, 24 April 1999, par. 31.

¹⁸² Rieff, "A New Age of Liberal Imperialism?" 2.

¹⁸³ Melissa Roberts, "A Superpowers Dilemma," 33.

confused dream is allowed to stand where a coherent and clear vision should be offered.

In David Rieff's words:

Obviously, neither the activists nor the Kosovars themselves imagined the kind of limited, hesitant, politically hamstrung military campaign NATO would undertake when they called for action. And yet this was the predictable, perhaps even the inevitable consequence of not defining that 'it' [as in the modern cliché: "just do it"]. The new language of rights, so prevalent in Western capitals, has been revealed to be at least as misleading about what is and is not possible, what it did and did not commit Western states to, as it is a departure from the old language of state sovereignty.¹⁸⁴

It is precisely this confusion, partly understandable and partly unavoidable, given the changes of the past half century, which lies at the heart of the UN and its charters and declarations. It is in light of the Kosovo experience and with the intent of explicitly delineating the present shortcomings of the UN Charter and the Universal Declaration of Human Rights that the following critique is offered.

¹⁸⁴ Rieff, "A New Age of Liberal Imperialism?" 7.

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IV. THE UN . . . CRITIQUED

At the London summit of the Group of Seven in July 1991, acclaim was virtually universal regarding the "exceptional action" taken by leading states of the Gulf War coalition (including France, the United Kingdom, and the United States) to support the Kurds in northern Iraq. Consequently, the group urged the "UN and its affiliated agencies to be ready to consider similar action in the future if circumstances require it."¹⁸⁵ Yet markedly absent from the discussion was any reference to the basis for such interventions, and the manner in which they were to be conducted. In part, to be sure, this stemmed from a sense of euphoria and belief that a new age had dawned—President Bush's "new world order." After all, the Cold War had ended, Iraq had been ejected from Kuwait, and, of course, the interdiction in support of the Kurds seemed successful.

However, the overarching reason for the lack of discussion on future interventions stemmed from the fact that the present UN charter was considered applicable and appropriate as written or—at worst—required very little improvement. Sari Nusseibach's comments regarding the need to intervene when injustice occurs seem to validate this sentiment: "For such intervention to be just . . . it must be established that the intervention was morally motivated—that is that its aim was the upholding of natural rights and moral principles. Many of them are contained in the United Nations

¹⁸⁵ Freedman, 2.

charters.”¹⁸⁶ In fact, however, so many “rights” and “principles” are contained in the Charter that gaining a consensus for what violations mandate intervention proves immensely difficult.

A. THE UN CHARTER

The world envisioned by the UN Charter brings with it two fundamental flaws. First, as Freedman aptly observes, the “responsibility of the international community regarding internal wars, persecution and repression is still evolving.”¹⁸⁷ Consequently, the resulting gap between these developing responsibilities and the Charter itself is growing ever more pronounced. Although the Charter elevates the notions of human rights, it only specifies the use of military intervention if “international peace and security” are threatened. The vagueness of this formula has spurred heated debate regarding the potential manipulation of the terms to justify intra-state intervention. In fact, Dag Hammarskjold, then UN Secretary General, coined the term “Chapter VI and a half” to cover those operations which did not lend themselves to peaceful settlements under Chapter VI or meet the prerequisites of Chapter VII’s breaches of peace and acts of aggression.¹⁸⁸ At first applied to peace-keeping operations,¹⁸⁹ “Chapter VI and a half”

¹⁸⁶ Sari Nusseibach, “Can Wars Be Just? A Palestinian Viewpoint of the Gulf War,” in *But Was it Just? Reflections on the Morality of the Persian Gulf War*, ed. David E. Decosse (New York: Doubleday, 1992), 75.

¹⁸⁷ Freedman, 1.

¹⁸⁸ Jane M. O. Sharp, “Appeasement, Intervention and the Future of Europe,” in *Military Intervention in European Conflicts*, ed. Lawrence Freedman (Cambridge, Mass.: Blackwell Publishers, 1994), 39.

soon expanded to cover humanitarian intervention. However, as Lori Damrosch observes, the legal bounds are being stretched to their breaking point.¹⁹⁰ Increasingly the vastly expanding definitions of what constitutes a threat to “international peace and security” are devaluing the traditional notions covered in Chapter VII.

However, revamping the Charter to cover “Chapter VI and a half” operations, specifically humanitarian intervention, would require consensus on what constitutes such intervention. Here the problem (the second fundamental flaw) is not that existing categories are being stretched to the breaking point but rather that the categories are themselves too broad. If human rights at the most fundamental level constitute a sense of human dignity—a right to life—then the Charter’s emphasis on sociopolitical and socioeconomic issues is an attempt at comprehensive inclusiveness which undermines the power of simplicity and hinders respect for what is truly fundamental.

For instance, R.J. Vincent in *Human Rights and International Relations* offers a thoughtful defense of the position that “sense cannot be made of a right to life unless it is a right to subsistence as well as to security.”¹⁹¹ This point should not go unheeded. Still there remains a difference between these rights. However desirable “higher standards of living, full employment, and conditions of economic and social progress and

¹⁸⁹ Sharp defines peace-keeping operations as “intervention by military forces under passive rules of engagement to keep a peace already agreed by the previously warring parties” (Sharp, 39). It is worth keeping in mind when considering the case of stretching the Charter’s definitions that the “UN Charter makes no mention of peacekeeping” (Damrosch, 101).

¹⁹⁰ Burley and Kaysen, 13.

¹⁹¹ R.J. Vincent, *Human Rights and International Relations*, 13.

development”¹⁹² may be, these goals may or may not be feasible given a particular state’s economic well-being and socio-political bent. Furthermore, Vincent is correct to note that human rights “have three correlative duties: duties to *avoid* depriving, duties to *protect* from deprivation and duties to *aid* the deprived.”¹⁹³ However, a nuanced understanding must acknowledge that avoidance of deprivation may be relatively easily accomplished and applicable to all regardless of circumstances, whereas protecting against deprivation and aiding the deprived may or may not be feasible in particular circumstances, though these duties themselves never go away.¹⁹⁴

In an imperfect world, where ambiguity and vagueness are easily and readily manipulated, it is unrealistic to expect agreement to take place in a clearly specified sequence of steps based on lucid and precise definitions which acknowledge such subtle distinctions. One could nonetheless imagine a consensus based on a cross-cultural, cross-national understanding of the largely negative charge to avoid the actual deprivation of human life. Such a minimum basis of agreement could then be wielded to prevent the most egregious human rights violations—e.g., genocides—or to bring them to a swift end. Without such basic distinctions, positive duties of protecting against deprivation and

¹⁹² Article 55 of “The Charter of the United Nations,” 477.

¹⁹³ Vincent, *Human Rights and International Relations*, 11 (emphasis in original).

¹⁹⁴ Timothy Garton Ash’s observations regarding this matter—made in reference to why Europeans intervened in Kosovo and not Rwanda—are worthy of consideration: “Europe is also a moral community: not as strong as the nation, let alone as the family, but still something stronger than the moral community of all humankind. And also quite simply, that it is closer to us. Duties are related to distance” (Ash, “Ten Years in Europe”). Ash observes that it is not the underlying worth of one man over another—which intrinsically is the same—that leads to this conclusion but simply the duty of proximity.

aiding the deprived are lumped together with a "universal respect for, and observance of, human rights and fundamental freedoms;"¹⁹⁵ and this only adds to the difficulty of reaching international consensus and deciding on a course of action.

B. UNIVERSAL DECLARATION OF HUMAN RIGHTS

In this regard, the Universal Declaration of Human Right only befuddles the matter even more. The Declaration embarks upon a slippery slope by stating that man has a fundamental right to "take part in the government of his country, directly or through freely chosen representatives."¹⁹⁶ Although not a direct endorsement of democracy, it limits governmental models to some derivative thereof. In essence, then, democracy is equated, as a standard of equal value, to human dignity and is, therefore, portrayed as no less universal. Although liberal democracies have proven to be "history's most benevolent governments and political shields of basic rights," Amstutz correctly asserts that such a system of government is not the "only type of regime that can protect human dignity."¹⁹⁷ In the tradition of John Stuart Mill, Michael Walzer astutely points out, "As with individuals, so with sovereign states: there are things that we cannot do to them, even for their own ostensible good."¹⁹⁸ In short, democracy, though itself possibly an

¹⁹⁵ Article 55 of "The Charter of the United Nations," 477.

¹⁹⁶ Article 21, "Universal Declaration of Human Rights."

¹⁹⁷ Amstutz, 122.

¹⁹⁸ Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), 89. Haass summarizes Mill's position as follows: "Mill held that intervention by one state against another was permissible to help the people of a state throw off a foreign yoke. In short, counter-intervention was sanctioned. But Mill was

“ostensible good,” is not an essential prerequisite to the defense of human dignity. It qualifies as a goal and not a right. Consequently, the promotion of democratic rule is not a sufficient justification for military intervention.

The Declaration goes further down the slippery slope. Hence, the “right to social security” and the entitlement to the realization of the “economic, social and cultural rights indispensable for his [man’s] dignity” only create further points on which international disputation can erupt.¹⁹⁹ Although qualified by the clause, “In accordance with the organization and resources of each state,” the inability to fulfill these “rights” implicitly stigmatizes an impoverished country as one not fulfilling “universal human rights.” Although it may be absurd and almost unimaginable to consider that military intervention might take place to attempt to correct this wrong, the stigma remains; and it heightens the tension between what have traditionally been defined as the “haves and the have nots,” the prosperous West and the destitute Third World.

The absurdity of equating, among other similar luxuries, the “right to rest and leisure, including . . . periodic holidays with pay,”²⁰⁰ the right to free education,²⁰¹ and the right to participation in the “cultural life of the community,”²⁰² with basic human

careful to avoid advocating intervention in the absence of such provocation because it could lead to wars among the powers of the day and in any event would do little or no good as a people could not be saved from themselves” (Haass, 13).

¹⁹⁹ Article 22, “Universal Declaration of Human Rights.”

²⁰⁰ Article 24, “Universal Declaration of Human Rights.”

²⁰¹ Article 26, “Universal Declaration of Human Rights.”

²⁰² Article 27, “Universal Declaration of Human Rights.”

dignity contributes to the confusion and disputes regarding the essence of what constitute human rights. In short, defining universal human rights in lofty, all-embracing terms covering the spectrum of social, cultural, economic, and political considerations not only devalues human dignity but confuses the issues on which universal consensus is truly essential to legitimize military intervention on behalf of human rights.

C. THE UN AND MODERNITY

Hence, although human rights have increasingly been on the agenda of international political discourse, Dacyl rightly notes that "human rights law is consistently compromised by the same 'undisputed rule of international law' that every state has exclusive control over individuals within its territory."²⁰³ The reason for this consistent compromise is a "serious disparity of opinions with regard to human rights."²⁰⁴ The battle for human rights is being waged under numerous, often contradictory banners; the front is broad, but the line is shallow and easily overrun. Hence, the UN's "distinctive contribution to international security as a builder of norms"²⁰⁵ is often easily belittled as little more than a proverbial "global talking shop." This is all the more the case given the "absence of community enforcement capabilities." In practice, the enforcement of

²⁰³ Dacyl, "Sovereignty Versus Human Rights," 152.

²⁰⁴ Ibid.

²⁰⁵ Michael N. Barnett, "The United Nations and Global Security: The Norm is Mightier than the Sword," in *Ethics and International Affairs*, vol. 9, 1995. Available [Online]: <<http://www.cceia.org/barnett9.htm>> [16 November 1998].

international order with respect to human rights depends on "voluntary patterns of compliance, the effectiveness of which depends, in turn, on perceived self-interest."²⁰⁶

But what is to be understood as "self-interest"? In the absence of consensus about truth—universal and unchanging truth regarding virtues and obligations—the pursuit of self-interest can lead to a Nietzschean leap to power, *der Wille zur Macht*.²⁰⁷ However, if there is truth—understood in any logical sense—then it must be universal. If it is universal, it is intrinsically applicable to all humanity; and it is in everyone's self-interest to follow its precepts. It is precisely this point which stands under scrutiny in a skeptical world.

Hence, though well-intentioned, M.W. Reisman's argument sounds utopian to modern ears:

[T]here are higher values affirmed in customary international law—the kinship and minimum reciprocal responsibilities of all humanity, the inability of geographic boundaries to stem categorical moral imperatives and ultimately, the confirmation of sanctity of human life, without reference to place or to transient circumstances—that take precedence over principles of non-intervention.²⁰⁸

²⁰⁶ Dacyl, 152.

²⁰⁷ *Der Wille zu Macht*, literally translated as "the will to power," is itself an existential undertaking requiring a leap of faith. That is to say, Nietzsche rejected Søren Kierkegaard's leap of faith as a leap of despair (As T.Z. Lavine notes of Kierkegaardian thought: "[T]he way to overcome despair is to choose despair" (T.Z. Lavine, *From Socrates to Sartre: The Philosophical Quest* (New York: Bantam Books, 1984), 323). Nietzsche therefore argued that men must "find the courage themselves to become gods in a world without God" (Lavine, 325). A new race of *Übermensch*—supermen—must emerge whose only morality is to affirm life: "to be powerful, creative, joyous, and free" (Lavine, 325). As Nietzsche states, a philosophy of despair is unimaginable, for "self-preservation forbade me to practice a philosophy of wretchedness and discouragement" (Lavine, 325). Hence, one is left with the leap to *der Wille zur Macht*.

²⁰⁸ Reisman quoted in Dacyl, 145.

Reisman's argument follows well in the footsteps of what Kant called the "public law of Mankind"²⁰⁹ and what contemporary international relation theorists refer to as "duties beyond borders" or "cosmopolitanist morality."²¹⁰ In short, it is an "acknowledgement of the existence of certain universally binding values that always must be protected, and rules which unconditionally must be respected in civilized international relations."²¹¹

The formulation is nonetheless simplistic. It simply assumes the existence of a *civitas*—a society or community—that understands rights in the context of duty; a society which accepts as given absolute truth and universal reason; a society that has a vision of man as separate from the world he inhabits; a society that understands man as both flesh and spirit. In short, it assumes a general consensus on natural law. It assumes precisely an outlook that man—especially Western man—no longer takes for granted. Today people assume many things but very rarely the outlook just described. Hence, it is no surprise that a "consensus is missing on the very concept of human rights."²¹²

Indeed, contemporary discussions rarely reach this level. Politicians tend to rely on muddled rhetoric and a complacent populace accepts it. In the words of Peter Steinfels:

²⁰⁹ Kant quoted in Dacyl, 145.

²¹⁰ Dacyl, 146.

²¹¹ Ibid.

²¹² Ibid.

What is distressing is how often the moral pronouncements offer only the surface of a position without following that line of thought through to its logical conclusions or its rock-bottom principles.

Ultimately, people have to assess the facts for themselves and consult their consciences. What they need from moral leaders is not so much unanimity but clarity, and certainly not the same vague generalities favored by politicians and diplomats.²¹³

Although what follows is by no means a comprehensive analysis of the morally disoriented edifice of modernity and a sweeping apologetic for the construction of a new one, it does intend to paint at least the broad strokes. If time and space permitted, these broad strokes would be followed by finer brushes to paint a picture more luminescent in detail but the same in essence.

As Alvin Plantinga has pointed out, "Your view as to what sort of creature a human being is will determine, in whole or in part, your views as to what is rational or irrational for human beings to believe."²¹⁴ Modernity's answer to this question has resulted in much of the confusion pervading political and cultural discussions at the twilight of the twentieth century. The NATO intervention in Kosovo and the arguments surrounding intervention on behalf of human rights reveal a core confusion regarding the nature of reality and man. This is not to say that *Realpolitik* or *Moralpolitik* are new developments. In practice they have been around since the beginning of recorded history,

²¹³ Peter Steinfels, "Belief: For Moral Leaders, there is a Need for Clarity in Addressing the Issue of War in Serbia," *New York Times*, 17 April 1999, p. A15.

²¹⁴ Alvin Plantinga, "Theism, Atheism, and Rationality," 11 June 1996. Available [Online]: <<http://www.leaderu.com/truth/3truth02.html>> [9 February 1999].

and one could argue that the former was codified cogently by Machiavelli and the latter by Augustine. The battle is therefore old. What has changed, however, is the field of battle itself.

Variations of relativistic pragmatism have shifted the ground of battle, and they have (at least in modern eyes) conquered the philosophical high ground where once truth and reason stood. Hence, any discussion of morality in the present political context immediately brings to mind the relativization of all matters of truth. As physicist Alan Sokal quaintly observes—in terms reminiscent of Nietzsche's infamous words—"We are all post-modern relativists: you go your way and I'll go mine. If we meet, it's beautiful. And if we don't, well, that's only to be expected."²¹⁵ Yet, structuring a society, let alone a state or international order, on such a foundation is tantamount to building on quicksand. In fact, the entire modernist foundation has been sinking in it. As T.S. Eliot lamented, "We are the hollow men/ We are the stuffed men/ Shape without form, shade without colour/ Paralysed force, gesture without motion."²¹⁶

The unequivocal destruction caused by the age of man being the measure of all things has led to a postmodern backlash. The ideal has been discarded; truth as a banner

²¹⁵ Edward Rothstein, "It's a Battlefield Out there, Culturally Speaking," *New York Times*, 7 December 1998, B2. Nietzsche argued over a century ago, "Physicists believe in a 'true world' in their own fashion. . . . But they are in error. The atom they posit is inferred according to the logic of the perspectivism of a consciousness—and is therefore itself a subjective fiction. This world picture they sketch differs in no essential way from the subjective world picture: it is only construed with more extended sense, but with *our* senses nonetheless" (Friedrich Nietzsche, *The Will to Power* (1889), cited in *A Dictionary of Philosophical Quotations*, ed. A.J. Ayer and Jane O'Grady (Oxford: Blackwell Publishers, 1994), 318 (emphasis in the original).

²¹⁶ T.S. Eliot, "The Hollow Men." Available [Online]: < <http://www.palace.net/~llama/poetry/hollowmen> > [12 November 1999].

has been torn down. As Nietzsche foresaw, truth has become "something that must be created and that gives a name to a process, or rather to a will to overcome that has in itself no end."²¹⁷ Subjectivism and relativism are the banners of modernity gone awry. As C.S. Lewis observed:

Out of this apparently innocent idea comes . . . the fatal superstition that men can create values, that a community can choose its 'ideology' as men choose their clothes. Everyone is indignant when he hears the Germans define justice as that which is to the interest of the Third Reich. But . . . this indignation is perfectly groundless if we ourselves regard morality as a subjective sentiment to be altered at will. Unless there is some objective standard of good, over-arching Germans, Japanese, and ourselves alike whether any of us obey it or no, then of course the Germans are as competent to create their ideology as we are to create ours. . . . Unless the measuring rod is independent of the things measured, we can do no measuring.²¹⁸

The need for objective standards clearly delineated is difficult to deny. Without objective standards, it is impossible to discuss matters of justice and legitimacy without the dialogue degenerating into cultural relativism. Once bogged down in this mire, dialogue is limited to slinging the self-same mud in which one is stuck. If progress transpires, it is only because respective relativisms perchance meet. As G. K. Chesterton observes, "The danger of working merely by custom is that the neglect of custom may

²¹⁷ Friedrich Nietzsche, *The Will to Power* (1889) cited in *A Dictionary of Philosophical Quotations*, 321.

²¹⁸ C.S. Lewis, "The Poison of Subjectivism," in *Christian Reflections*, Walter Hooper, ed. (Grand Rapids, Michigan: William B. Eerdmans Publishing Company, 1967), 73 (the essay was first published in 1943).

itself become customary. The danger of working by compromise is that the compromise may itself be compromising, or may itself be compromised.”²¹⁹

Such warnings are ignored by modern pragmatic practitioners of *Realpolitik* who despise what they view as the chains of absolutes. They favor latitude to justify inaction as well as intervention and would rather not be bound by standards that would call them to task. As the United Kingdom’s Foreign Minister, Robin Cook, stated in a speech to the North Atlantic Council, “I am not sure that it would be wise of us to limit ourselves by writing a legal base, rather than by making sure that as an organization we have the flexibility to respond to the problems in the real world.”²²⁰ Ironically, the real world desperately needs a standard to measure the decisions of those who are reluctant to act in the face of butchery.

Some intellectuals have characterized the struggles of our age as globalization and Fukuyama’s “end of history” versus global fragmentation and Huntington’s “clash of civilizations,” but both perspectives are unsatisfactory for forging a foundation.²²¹ The prophets of globalization cannot explain the false messiahs of modernity. The twentieth century has been one of man’s bloodiest as power mongers such as Hitler, Stalin, Pol Pot,

²¹⁹ G. K. Chesterton, “Prohibition in America,” 8 January 1921, in *The Illustrated London News: 1920-1922*, in *The Collected Works of G.K. Chesterton*, vol. XXXII, ed. Lawrence J. Clipper (San Francisco: Ignatius Press, 1989), 159.

²²⁰ Robin Cook, *Speech to the North Atlantic Council*, Brussels, 8 December 1998, p. 1 of transcript.

²²¹ See Francis Fukuyama’s *The End of History and the Last Man* and Samuel Huntington’s *The Clash of Civilizations and the Remaking of World Order*.

and Milosevic have been able to bring about great horrors. The "Huntingtonians" contend that this is a regrettable but unavoidable reality.

V. A WAY FORWARD

It is into this world of confusion—where the prophetic tones of globalization and the supposedly impending triumph of human rights, democracy, and peace clash with a relativistic pluralism that argues for the respect of cultural autonomy and political sovereignty in the various regions of the world—that this section attempts to shine the light of practical reason. That is, this section reviews the case for natural reason and absolute truth.

A. A UNIVERSAL ETHIC

The first challenge is to promote a universal ethic. This requires separating truth from “McWorld.”²²² In other words, natural law must be separated from the crass materialism, extreme individualism, and fatal rationalism which stand increasingly as the hallmarks of the West. Kant’s categorical imperative, reflective of his dichotomous philosophy that separated the noumenal from the phenomenal, was an attempt to ground a universal order on man’s reason. However, it ended by destroying reason itself. Reason separated from its transcendental (or noumenal) root withered, and a relativistic and unreasonable age has arisen where the primacy of reason itself must be reestablished. Therefore, *das Ding an Sich*—the metaphysical reality of transcendental absolutes—must

²²² Benjamin R. Barber, “Jihad vs. McWorld.” Barber’s expression “McWorld” refers to the “globalization of politics” characterized by four imperatives: “A market imperative, a resource imperative, an information-technology imperative, and an ecological imperative.” In opposition, Barber holds, stands “Jihad” or the “Lebanonization of the World”: “nation states and, to an ever greater degree, subnational factions in permanent rebellion against uniformity and integration—even the kind represented by universal law and justice.”

once again be studied and understood as the basis of reason and truth and as a necessary *a priori* to place the particulars in a context where Kant's pure concepts will not suffice. The latter serve only as a framework which Kant's subject manipulates to interpret objects. As Kant states, "Mind is the law-giver to nature."²²³ Kant's noble attempt to rectify Humean skepticism ironically gave birth to subjectivism. Yet certain objects are not subject-dependent; they exist whether one (the subject) is aware of them or not. Hence, what follows is an appeal to reason as reflected in the universal characteristics of morality and justice grounded in an awareness of transcendental absolutes.

B. THE UNIVERSAL DIGNITY OF MAN

Words such as butchery and slaughter, commonly reserved for the treatment of animals, have become characteristic descriptions of man's inhumanity to man. In these circumstances, calling for a return to the banners already erected to extol the worth of man is not enough. These banners are stained by relativism; and, moreover, the international documents are filled with insubstantial and contradictory requirements. What follows, therefore, is a foundational argument which seeks to reestablish human dignity—the basic worth of man as man.

C. THE WAY OF TEMPERED HOPE

The way forward, then, is not a blind optimism nor a pragmatic rationalism but a realism that understands the need to uphold humanity for humanity's sake in full awareness of the constraints of an imperfect world. Professors M. Cherif Bassiouni and

²²³ Kant quoted in Lavine, 197.

Ved P. Nanda provide a succinct outline of precisely such a way forward in their treatise on international criminal law. According to Bassiouni and Nanda,

A new codification will not succeed in compelling recognition if it remains purely declaratory. A new codification must admit certain realities and correspond to the reciprocal interests of the belligerents, but it must also be accompanied by the recognition of ethical concepts based on certain human values. These values must be independent of the ideological and political aims used to justify recourse to violence, and they must even apply to those who would trample them underfoot.²²⁴

NATO's handling of the Kosovo crisis illustrates the tendency to institutionalize ambiguity for the sake of an apparent unity. Rhetoric was construed as action and inaction was construed as prudence. The muddied waters made it very difficult for everyone—including participants and observers—to achieve clarity. All the while, the macabre farce was left to play on while the victims suffered. Such catastrophes will recur whenever standards are eroded and man's baser inclinations find voice in societies that extol pragmatism and relativism. (In fact, catastrophes are often only mitigated when the banners are actually in place; and this testifies to the need that they be flown as prominently as possible.) In the words of Chesterton, "And when men forget their birth and baptism, they have nothing except the folly of yesterday with which to compare the madness of to-day."²²⁵ Thus, in what often seems to be an insane world, absolute standards offer the only true sanity. This thesis intends to throw light on where these

²²⁴ M. Cherif Bassiouni and Ved P. Nanda, *A Treatise on International Criminal Law*, vol. 1, *Crime and Punishment* (Springfield, Ill: Charles C. Thomas Publishers, 1971), 303.

²²⁵ Chesterton, *The Illustrated London News*, 1920-1922, 160.

“standards of sanity” may be found. They alone can serve as the foundation for a generation that desires to “create some way ahead” in a “crumbling world.”²²⁶

D. THE TAO

In the final analysis, the way ahead is marked by a return to absolute truth—a revolution in the most basic sense. Although at first glance it may seem surprising to learn that what has been heralded as progress may be more accurately described as regress, modernity’s horrors testify that this is precisely the case. Nonetheless, arguments for temperance and prudence are usually met with charges of obscurantism—another idealist calling for a return to some fabled golden age and standing in the way of greater progress. As C.S. Lewis observed, such charges arise “from the fatal serialism of the modern imagination—the image of infinite unilinear progression which so haunts our minds.”²²⁷ As Lewis pointed out, “There are progressions in which the last step is *sui generis*—incommensurable with the others—and in which to go the whole way is to undo all the labour of your previous journey. To reduce the *Tao* to a mere natural product is a step of that kind.”²²⁸

It is on what Lewis referred to as the *Tao* that the revolution in thinking needs to be based. The *Tao* is the “doctrine of objective value, the belief that certain attitudes are

²²⁶ Safire.

²²⁷ C.S. Lewis, *The Abolition of Man* (New York: Macmillan, 1944; reprint, New York: Touchstone, 1996), 86.

²²⁸ *Ibid.*, 86.

really true, and others really false, to the kind of thing the universe is and the kind of things we are.”²²⁹ It is the commonality found in the epistemological and ontological understandings of such divergent forms of faith and philosophy as the “Platonic, Aristotelian, Stoic, Christian, and Oriental”²³⁰ outlooks. In short, at the heart of the *Tao* lies practical reason.

How can such a claim be made in an era when tolerance, plurality, and relativism, or at least *a priori* arguments based solely on the particulars (which invariably lead to relativism)²³¹, are considered the hallmarks of enlightened thinking? One could easily argue that these systems have failed to produce whole men and have erected only stuffed, “hollow” men. Yet, such a failure alone does not determine the validity or invalidity of an argument. It is more important to recognize that relativism—whatever its supposed appeal as a means of avoiding ideological conflict—is untenable. To say that “all is relative” or that “tolerance is the only duty” may lead one to accept synthetic, subjective reasoning. However, the question must be asked: is the purveyor of arguments such as “all is relative” or that “tolerance is the only duty” making a relative or absolute statement? If it is relative—an *a priori* based on societal consensus or one’s own enlightened reflection—then another’s acceptance of it can only be won by his own

²²⁹ Ibid., 31.

²³⁰ Ibid. In his now famous appendix to *The Abolition of Man* entitled, “Illustrations of the Tao,” Lewis provides examples of cross-cultural consensus on several basic laws of which the “law of general beneficence,” the “law of justice,” the “law of mercy,” and the “law of magnanimity” are of special interest to the present study.

²³¹ See section “A Universal Ethic” of this thesis.

relative will. In the end, with this approach, all of society would collapse. In fact, even if a case could be made for such relativism, it would require the use of an antithetical sentence structure (relative is not non-relative).

In short, man cannot consistently live with a relativistic construct because man and nature are based on antithesis and absolutes, however much particular men may deny them.²³² Value decisions are inescapable regardless of one's cleverness in wording or cunning in theory. Hence, as C.S. Lewis pointed out:

The moment you say that one set of moral ideas can be better than another, you are, in fact, measuring them both by a standard, saying that one of them conforms to that standard more nearly than the other. But the standard that measures two things is something different from either. You are, in fact, comparing them both with some Real Morality, admitting that there is such a thing as a real Right, independent of what people think, and that some people's ideas get nearer to that real Right than others. Or put it this way. If your moral ideas can be truer, and those of the Nazis less true, there must be something—some Real Morality—for them to be true about.²³³

²³² The argument could be taken a step further. Although the new and highly contentious discipline of science and technology studies (STS) argues that science is a "social construct" and primarily—in words reminiscent of Nietzsche—a matter of power, one can view this movement, especially the extreme variant, as theoretically intriguing but practically untenable ("Science Wars: Phony Peace," *The Economist*, 16 October 1999, "Review of Books," 8). In fact, the dominant currents in modern science are increasingly supporting the notion of absolutes based not solely on natural laws (understood in the context of scientific naturalism) but intelligent design. Hence, even the atheist Carl Sagan concluded his study of the human brain by saying, "The neurochemistry of the brain is astonishingly busy. The circuitry of a machine more wonderful than any devised by humans" (Carl Sagan, *Cosmos* (New York: Random House, 1983), 278). Or as microbiologist Michael Behe poignantly states, "Life on earth at its most fundamental level, in its most critical components, is the product of intelligent activity. . . . The conclusion of intelligent design flows naturally from the data itself—not from sacred books or sectarian beliefs" (Michael Behe, *Darwin's Black Box: The Biochemical Challenge to Evolution* (New York: Touchstone, 1998), 193).

²³³ Lewis, *Mere Christianity* (New York: Touchstone, 1996), 25. Nick Cohen notes, "We have heard many foolish comparisons between Milosevic and Hitler in recent weeks. There has been much chatter about genocide and appeasement. It is as if we cannot see modern horrors for what they are and must look

In fact all foreign policy—like all aspects of life—is a moral enterprise. As Amstutz notes, “Since values are at the foundation of all public policy decisions, the issue is not whether values will influence the conduct of foreign policy, but which values and in what ways.”²³⁴ In the words of Ken Booth, Professor of International Politics at the University of Wales, “Ethics, as sets of ideas about how we should think and behave, infuse and inform every international event.”²³⁵ Hence, though not always acknowledged or even credited, ideas—including presuppositions—shape the thinking of the people who govern states. At its core, every action—be it of an individual or a state—can be defined by an idea that is held to be true, regardless of how cogently it may be understood and justified. It now remains to ensure that the proper ideas—the absolutes grounded in natural law—are identified and upheld.

This involves an appeal to the practical reason of man and his capacity to recognize fundamental moral truths. As Confucius argued, “With those who follow a different Way it is useless to take counsel.”²³⁶ Plato speaks in a similar vein of the “educated man” who “praises and rejoices over and receives into his soul the good” and

back with ignorance to the second world war” (Cohen, “The Great Balkan Lie,” *New Statesman*, 26 April 1999, 17).

²³⁴ Amstutz, 18.

²³⁵ Ken Booth, “Military Intervention: Duty and Prudence,” in *Military Intervention in European Conflicts*, ed. Lawrence Freedman (Cambridge, Mass.: Blackwell Publishers, 1994), 56.

²³⁶ *Analects of Confucius*, xv, 39 quoted in Lewis, *The Abolition of Man*, 58.

the fool who simply does not understand²³⁷—a theme repeated by Aristotle in his *Nichomachean Ethics*²³⁸ and in the *Talmud*²³⁹ and the Christian *New Testament*.²⁴⁰

As C.S. Lewis noted, “Outside the *Tao* there is no ground for criticizing either the *Tao* or anything else.”²⁴¹ In fact, “If we are to have values at all we must accept the ultimate platitudes of Practical Reason as having absolute validity: that any attempt, having become skeptical about these, to reintroduce value lower down on some supposedly more ‘realistic’ basis, is doomed.”²⁴² Indeed, as Lewis added, from the indicative—the facts—an imperative cannot follow; the reality of an “is” cannot lead to an “ought.” In the end, one must give up all hope of objective knowledge, rationality, and reason or “extend the word Reason to include what our ancestors called Practical Reason and confess that judgements such as *society ought to be preserved* are not mere sentiments but are rationality itself.”²⁴³

²³⁷ Plato, *The Republic*, Book III, 402, in *The Dialogues of Plato*, trans. Benjamin Jowett, in *Great Books of the Western World*, vol. 7, ed. Robert Maynard Hutchins (Chicago: Encyclopedia Britannica, 1952), 333.

²³⁸ Aristotle, *Nichomachean Ethics*, Book VI, chapter 5, 1140b and Book VII, chapter 8, 1151a in *The Works of Aristotle*, vol. 2, in *Great Books of the Western World*, vol. 9, ed. Robert Maynard Hutchins, (Chicago: Encyclopedia Britannica, 1952) 388, 402.

²³⁹ See, for instance, Deuteronomy 4-5, 28.

²⁴⁰ See, for instance, John 7:49 and Mark 16:16.

²⁴¹ Lewis, *The Abolition of Man*, 59.

²⁴² *Ibid.*, 60.

²⁴³ *Ibid.*, 45 (Emphasis in original).

The elements of practical reason are not conclusions but premises. As Lewis further observed, "You must allow that Reason can be practical, that an ought must not be dismissed because it cannot produce some is as its credential. If nothing is self-evident, nothing can be proved. Similarly, if nothing is obligatory for its own sake, nothing is obligatory at all."²⁴⁴ If nothing is obligatory, anarchy will reign. Such a state of nature may become far more nasty and brutish than Hobbes's conception. Therefore, "Come now, and let us reason together"²⁴⁵ to chart a way forward from the mire in which modernity is bogged down.

E. MORALITY: ITS PURPOSE

This, then, brings the consideration to the heart of morality, for its applicability is in its universality. In this sense, morality involves conforming to a universal "standard of established sanctioned codes or accepted notions of right and wrong."²⁴⁶ In its capacity as overarching guide in structuring actions, morality, then, serves a threefold function. First, it provides direction in that it clarifies various conceptions of national interest.²⁴⁷ As Edmund Burke noted, a statesman "having a general view of society and the principles by which it is to be guided, would base his decision on the circumstances, yet never

²⁴⁴ Ibid., 53.

²⁴⁵ Isaiah 1:18.

²⁴⁶ It should be noted that "ethics" and "morality" are closely related. Ethics, thus, may be defined as "a theory or system of moral values"—in short, morality (*Webster's Ninth College Dictionary* (1991), s.v. "Ethic," "Moral," and "Morality."

²⁴⁷ Arthur Schlesinger, Jr., "The Necessary Amoralism of Foreign Affairs," *Harper's Magazine* (August 1971), 72.

losing sight of the principles by which he is to be guided.”²⁴⁸ Second, morality provides a basis of judgment, for without it foreign policy succumbs all the more readily to the inherent tendency towards power politics and a might-makes-right mentality.²⁴⁹ Finally, morality provides inspiration in the often bleak world of politics with its lackluster pragmatism. It is the call to a higher standard that transcends the individual and lifts him above the banality of mere self-existence to an awareness of the community of “human beings owing mutual respect and duties toward each other.”²⁵⁰ Yet, the pursuit of morality may easily degenerate into utopianism. To avoid this fate and ensure that the moral order is upheld, one must employ justice.

F. JUSTICE: MORALITY’S TEMPERENCE

A foundational idea in any ethical discussion is the concept of justice. Although variously defined as “righteousness” or “correctness,” at the heart of justice and its most fundamental definition, is the “impartial adjustment of conflicting claims.”²⁵¹ That is to say, that the justice motive is the “drive to correct perceived discrepancy between entitlements and benefits.”²⁵² It is a constant striving towards balance between opposites

²⁴⁸ Burke quoted in Amstutz, 26.

²⁴⁹ Amstutz realizes this reality when he states, “The challenge in bringing ethical norms to bear on foreign policy is to illuminate the relevant standards and to then choose a policy among legitimate alternatives, recognizing that any action will bear some evil” (Amstutz, 84).

²⁵⁰ Booth, 57.

²⁵¹ *Webster’s Ninth New Collegiate Dictionary* (1991), s.v. “Justice.”

²⁵² Melvin J. Lerner, “The Justice Motive in Human Relations,” in *The Justice Motive in Social Behavior: Adapting to Times of Scarcity and Change* (New York: Plenum Press, 1981), 12-13.

with the intent of achieving the golden mean. In the words of G. K. Chesterton, "We will make an equipoise out of these excesses."²⁵³

In regard to the issues at hand, justice is the desire for balance which fuels the debate between what Lori Damrosch refers to as "state system values" and "human rights values,"²⁵⁴ between the reality of state sovereignty and the moral imperative of humanitarian intervention, and, in general terms, between acting because one simply has the power to do so and acting because one has a just mandate. It was Blaise Pascal who noted the need for balance regarding the latter when he remarked, "It is therefore necessary to put together justice and force; and for that to ensure that what is just is strong, or that what is strong is just."²⁵⁵ Justice is a vision of a "balanced order, a world in which human dignity is the touchstone of public policy, a world in which the needs of the human being, at each stage of the life cycle, are recognized and respected."²⁵⁶

G. MORALITY: ITS DANGERS

The quest for justice to uphold a universal morality may, however, be easily corrupted. Indeed, morality involves four distinct dangers: a tendency towards

²⁵³ Gilbert K. Chesterton, *Orthodoxy* (Garden City: N.Y.: Image Books, 1959), 100.

²⁵⁴ Lori Fisler Damrosch, "Changing Conceptions of Intervention in International Law," in *Emerging Norms of Justified Intervention*, ed. Laura W. Reed and Carl Kaysen (Cambridge, Mass.: American Academy of Arts and Sciences, 1992), 92.

²⁵⁵ Pascal quoted in Pierre Oster, *Dictionnaire de citations françaises* (Paris: Dictionnaires Le Robert, 1993), 153.

²⁵⁶ Jean Bethke Elshtain, "Just War as Politics: What the Gulf War Told Us About Contemporary American Life," in *But Was it Just? Reflections on the Morality of the Persian Gulf War*, ed. David E. Decosse (New York: Doubleday, 1992), 59.

oversimplification, self-righteousness, resentment, and a neglect of consequences. Morality tends to breed platitudes. These then are applied to complex problems and more often than not these simple solutions to complex problems produce unsatisfactory results. Furthermore, morality often proves to be the breeding ground of self-righteousness, leading to a Messiah complex and an accompanying zealotry to conduct a "holy war." Alternatively, it may serve as a guise for selfishness clothed in universalistic morals and manipulated to "legitimize" immoral actions to the public. In turn, resentment results as the imbalance or injustice is eventually recognized and, thus, only further undermines the acceptance of the moral standard.

Amstutz notes, "The aim of morality is not to purify goals, but to uplift the quality of life—to bring peace and justice to this world."²⁵⁷ In fact, the underlying supposition of this statement harkens back to the importance of equipoise, for neither the ends nor the means are the sole consideration; both must be weighed in the balance. A similar concern for balance would avoid the other dangers as well. Hence, while moral discourse does not guarantee ethical behavior, such discourse does "qualify, reform, and direct action."²⁵⁸ For this reason, John C. Bennett observes, "It is better to keep the sources of moral judgment alive in the national life at the cost of hypocrisy than it is to lower the proclaimed standards to the practice of the moment."²⁵⁹

²⁵⁷ Amstutz, 35.

²⁵⁸ Ibid., 18.

²⁵⁹ John C. Bennett, *Foreign Policy in Christian Perspective* (New York: Scribner, 1966), 13. As the French moralist, Duc de la Rochefoucauld, stated, "Hypocrisy is a tribute which vice pays to virtue" (In *The*

Yet proclaiming these standards brings about its own set of difficulties. If Amstutz is correct in asserting that "without order there can be no justice among or within states,"²⁶⁰ immediately the questions arise, what is order, what brings it about, and what is the role of states in the process? Furthermore, how is the need to maintain order to be reconciled with the need to uphold human rights? The answers can be found in a consideration of the necessary balance between "state system values" and "human rights values." A balance between them is essential if military intervention is not to become a tool of unrestrained power politics.

H. STATE SYSTEM VALUES

"State system values" is a term burdened with such various nuanced meanings that any discussion of it usually transpires in a fog of imprecision and misunderstanding. Though it is beyond the purview of the analysis at hand, tracing the historical development of both the reality and theory of state systems proves tremendously insightful.²⁶¹ However, for the consideration at hand, a discussion of the fruits of these labors, specifically the interrelated terms of order, sovereignty, and interaction, will suffice to devise an adequate understanding of the term. At the heart of the discussion of

Oxford Dictionary of Quotations, 4th ed, ed. Angela Partington (Oxford: Oxford University Press, 1992), 410).

²⁶⁰ Amstutz, 62.

²⁶¹ Martin Wight's book, *International Theory: The Three Traditions* and David Yost's essay, "Political Philosophy and the Theory of International Relations," *International Affairs* 70 (April 1994): 263-290 are two works which discuss the historical and theoretical development of Western traditions of thinking about international politics and serve as a starting point for further investigation.

state systems reside two competing views of justice. On the one hand, the term “international justice” accepts the state system and argues for the upholding of justice among states. On the other hand, there exists the concept of “world justice” or justice among people—not states.²⁶² The latter is the classic Kantian and Wilsonian vision of a global “community of power” that would eliminate war.

Such a world, however desirable it may seem, is destined to remain a utopian fantasy. This is partly because the proponents of this vision erroneously assume that community life is primarily the result of political and constitutional arrangements such that a centralization of the legitimate “means of violence,”²⁶³ namely law enforcement agencies and military forces, would inherently produce community. In fact, however, social and cultural ties play a greater role in building communities. Furthermore, even if a centralized world government could be established, it would be subject to the danger of slipping into totalitarianism.²⁶⁴ If Lord Acton’s axiom holds that “power tends to corrupt and absolute power corrupts absolutely,”²⁶⁵ then a government having no counterweight to check its ambitions will assuredly be corrupted.

²⁶² Amstutz, 62.

²⁶³ H. H. Gerth and C. Wright Mills, ed. and trans., *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1946), 78.

²⁶⁴ Amstutz, 69-70.

²⁶⁵ Lord Acton quoted in Angela Partington, ed., *The Oxford Dictionary of Quotations*, 4th ed. (Oxford: Oxford University Press, 1992), 117.

The need for balance to check such ambitions is also substantiated philosophically. If one views the state as a system in its own right, an entity, then that system requires another system with which it can interact, grow, and reach equipoise. Karl Marx's statement that man "can develop into an individual only in a society"²⁶⁶ can be applied to states as well. Thus, though the phenomenon of sovereignty can be reproduced on a larger scale—with, for example, the member states of the European Union forming one European state—this does not change "the basic outline of the states system."²⁶⁷ Furthermore, though some would argue that the state system and sovereignty are being undermined and transcended by "transnational relations and international organizations," little evidence, either philosophical, theoretical, or historical, would seem to indicate that states will not maintain "the final say on questions of vital importance."²⁶⁸

However, this is not to say that the state system is an absolute and universal institution. In fact, the use of the term "system" to describe the interaction of states dates back only to the seventeenth century.²⁶⁹ As John Vincent noted, "There is no reason to suppose that men must always choose to live together in states, and no warrant for the

²⁶⁶ Marx cited in Iver B. Neumann, "John Vincent and the English School of International Relations," in *The Future of International Relations: Masters in the Making?* ed. Iver B. Neumann and Ole Waever (London: Routledge, 1997), 56.

²⁶⁷ Neumann, 47.

²⁶⁸ *Ibid.*, 46.

²⁶⁹ David Yost, "New Perspectives on Historical States-Systems," *World Politics* 32, no. 1 (October 1979): 151.

claim that there is some natural law suggesting the necessary conditions of existence for international society.”²⁷⁰ However, though the form may vary, the principle of order and balance does not. Thus, international society may be organized (for example) through a plethora of small communities, such as the family or tribe, or in only two global empires. Resembling more proximate human communities (for instance, one’s family and one’s neighborhood), states currently serve a “legitimate function in organizing communal life.”²⁷¹

A consequence of this arrangement is what Charles Beitz refers to as the “morality of states,”²⁷² according to which states are the chief actors entitled to political independence and territorial jurisdiction—in a word, sovereignty.²⁷³ Thus, state systems embody the “principles inherent in the international system of separate, sovereign states, including the principles of non-use of force, political independence of states, and sovereign equality.”²⁷⁴ Without these general guarantees, justice among states is

²⁷⁰ Vincent quoted in Neumann, 47.

²⁷¹ Amstutz, 68.

²⁷² David A. Welch, *Justice and the Genesis of War* (Cambridge: Cambridge University Press, 1993), 203.

²⁷³ Amstutz, 63. Neumann, quoting Hinsley, defines sovereignty in the following way: “There is a final and absolute political authority in the political community and no final and absolute authority elsewhere” (Neumann, 43). Furthermore, as the distinctive hallmark of state systems, sovereignty is no less a creation of the modern era. As Anne-Marie Slaughter Burley and Carl Kaysen observe, “Sovereignty is the distinctive hallmark of the modern era in international relations, the system first of states and then of nation states ushered in by the Peace of Westphalia” (Annie-Marie Slaughter Burley and Carl Kaysen, “Introductory Note: Emerging Norms of Justified Intervention,” in *Emerging Norms of Justified Intervention*, ed. Laura W. Reed and Carl Kaysen (Cambridge, Mass.: American Academy of Arts and Sciences, 1992), 13).

²⁷⁴ Damrosch, 93.

impossible to uphold, and independence is easily compromised as the more powerful may manipulate the weaker.

To say that sovereignty is a foundational right to a state is not to say that it is the only right that must be upheld. In addition, states share mutual moral obligations. As Iver Neumann summarizes Hugo Grotius, "Natural law applies to individuals as well as states."²⁷⁵ Although states are prone to neglect these moral norms, they are no less real and no less worthy of being upheld. However, since no arbiter exists in international society, the implementation of justice depends upon states themselves. Therefore, if states and the state-system are to amend the discrepancy between entitlements and benefits, they must first understand, as clearly as possible, what those entitlements are.

I. HUMAN RIGHTS VALUES

As previously noted, to state that there are universal entitlements or norms is to receive a backlash of criticism for being parochial and culturally bigoted. To attempt a general defense would require a tome beyond the scope of the present examination.²⁷⁶ Rather, in line with the consideration at hand, a defense of human rights will be propounded with the intent of proving their universality. (As noted earlier, the natural law principles involved were called the dictates of Practical Reason or the *Tao* by C.S.

²⁷⁵ Neumann, 48.

²⁷⁶ Amstutz provides the following list of moral norms requiring protection: human dignity (the focus of the present study), political freedom, national security, domestic prosperity, and international peace (Amstutz, 84).

Lewis.)²⁷⁷ It is in defense of these human rights, then, that a state's sovereignty can be infringed upon by other states in the system, depending on the gravity and nature of the violations of human rights. As John Vincent aptly noted, "If the single moral world were not a reality, it would be a good idea to invent it."²⁷⁸ It is enlightening to realize that a moral order does exist, and that life is not simply an experiment in philosophical existentialism.

In expanding this definition of the moral world, general agreement exists that those ruling—the states in the state systems paradigm—are called upon to affirm human dignity domestically and promote peace internationally. When a state fails to do so, it loses its "moral standing among the community of states."²⁷⁹ As a result of this condemnation and the inherent stigma associated with it, clarity and precision—to the greatest extent possible—are essential.

Of the many pitfalls and dangers in defining human rights, the greatest is that of ethnocentrism and chronological provincialism—"believing that what is valid now has always been so."²⁸⁰ This is especially the case in the Western world, as the formulators of natural law and human rights tend to define these ideas in exclusively Western terms.

²⁷⁷ Please see section "The *Tao*" of this thesis.

²⁷⁸ Vincent quoted in Neumann, 56.

²⁷⁹ Amstutz, 82.

²⁸⁰ Ibid., 115.

Although formulated during the Cold War, Hedley Bull's observation is still applicable.²⁸¹

We should remember, also, how slender is the consensus that unites the governments of the world today in the matter of human rights. While they speak a common language on this subject, and while there is a wide area of agreement on what are sometimes called 'basic human rights', the emphasis of the Western countries on the rights of individual persons against the state contrasts on the one hand with a Soviet conception of rights as conditions brought about by the state, and with the emphasis placed on the other hand by Third World governments on collective rights. The reluctance evident in the international community even to experiment with the conception of a right of humanitarian intervention reflects not only an unwillingness to jeopardize the rules of sovereignty and non-intervention by conceding such a right to individual states, but also the lack of any agreed doctrine as to what human rights are.²⁸²

Yet an agreed upon doctrine already exists in the internationally recognized concept of human dignity—the basic rights of personal security and integrity. ²⁸³ However, the definition of human rights is often stretched such that the term loses its natural simplicity and beauty. It is imperative that the essence of human rights be recaptured, for the universality of that essence, namely human dignity, offers hope for international agreement and cooperation.

²⁸¹ The use of the word "Soviet" can be replaced by "totalitarian"—the Soviet Union being a type of a totalitarian state.

²⁸² Hedley Bull, ed. *Intervention in World Politics* (Oxford: Clarendon Press, 1984), 193.

²⁸³ Amstutz, 116.

Notions of human rights have been categorized in recent decades as consisting of three equally valid types: civil-political, socioeconomic, and fundamental. This creates a broad, all-inclusive approach which not only cheapens the notion but leads to public policy confusion and further global fragmentation. In the civil-political arena, human rights are associated with free, constitutional government accompanying the modern, democratic state. With the pervasiveness of the notion of "democratic peace" sweeping through the capitals of states, politicians and theorists alike have equated human rights with a particular political arrangement. However desirable and conducive to respect for human rights such an arrangement may be, it is not an essential requirement for the preservation of fundamental human dignity.

A similar argument is applicable to socioeconomic rights. Vincent concludes that the right to life is an appropriate universal human right and that this right requires a "basic needs doctrine" implying an adequate quantity of food to sustain life, which in turn requires a rearrangement of the international economic system. By this logic, socioeconomic considerations become a universal.²⁸⁴ However, though the chain of reasoning is logical, it confuses a fundamental and positive right with a goal—something desirable but not necessarily something that can or must be achieved. As Amstutz observes, something "cannot be inalienable and universal if [its] fulfillment is dependent on national capabilities and resources."²⁸⁵ Thus, it would be inappropriate to declare an

²⁸⁴ Vincent quoted in Neumann, 57. See also Vincent *Human Rights and International Relations*.

²⁸⁵ Amstutz, 120.

impoverished government unjust because it lacks the financial means to alleviate the starvation of its people, though it recognizes their value in essence.

Hence, only those rights that derive from the inherent dignity of people can be classified as fundamental. In fact, human dignity is a concept as “old as civilization.”²⁸⁶ Individual rights were recognized in ancient Greece and Rome, at least for freemen, and in medieval Europe, notably in Latin Christendom. Modern theories of individual rights are linked to the social contract ideas propounded by philosophers such as Thomas Hobbes, John Locke, and Jean-Jacques Rousseau. It is here—in the roots of Western civilization and in the works of post-Renaissance philosophers—that the charge of equating universality with Western norms finds its basis. Nonetheless, despite some of the confusion that has grown out of the intermingling of basic human dignity with sociopolitical considerations, the view that fundamental human rights are defined by certain basic and universal laws of nature is not limited to Western civilization.

Jacques Maritain summarizes the impact of codification when he argues that the “dignity of the human person” is a meaningless expression if “it does not signify that by virtue of natural law, the human person has the right to be respected, is the subject of rights, and possesses rights. These are things which are owed to man because of the very

²⁸⁶ Ibid., 115. In fact, Amstutz notes that personal security and integrity are essentially negative in character in that they involve protection from the government—“one of the major violators of basic rights” (120). Although his enumeration is not all-inclusive, he lists the following as fundamental rights: “Protection from abuses such as genocide, systematic use of terror against ethnic or social groups, enslavement, forced labor, persecution of minorities, separation of children from families, and religious persecution” (Amstutz, 120).

fact that he is man.”²⁸⁷ In short, human dignity is the essential concept of global civil society. Though these values are articulated with exceptional clarity in Western civilization, “they are not [exclusively] values of the West since they can be traced to universal traditions and resonate in all cultures.”²⁸⁸

In fact, it is necessary to distinguish between the inherent worth of the individual and the ideology of individualism. The latter continually harps on one’s rights while rejecting any notion of duty. Yet, integral to the concept of the individual, properly understood, is his relation to other individuals in society, which rests not only on a concept of reciprocal rights but also on reciprocal duties. Individualism seems to forget that there can be no individual without society, just as there can be no liberty without community. As Josiah Royce observed,

For the only definite life that you can live will be a social life. This social life may indeed be one of enmity to society. But in that case your social order will crush you. . . . Your independence will die with you, and while it lives, nobody else will find its life worth insuring. For a man’s self has no contents, no plans, no purposes, except those which are, on one way or another, defined for him by his social relations.²⁸⁹

Thus, the charge of parochialism is countered with a reminder that though different religions and cultures have defined human rights in sundry ways, there remains a “cross-

²⁸⁷ Jacques Maritain, *The Rights of Man* (London: Centenary, 1944), 37.

²⁸⁸ Booth, 75.

²⁸⁹ Josiah Royce, *The Philosophy of Loyalty* (New York: Macmillan, 1920), 93-94.

cultural consensus concerning the universality of rights of personal integrity”—the essence of dignity.²⁹⁰

However, merely recognizing that state system interactions are part of a moral enterprise constrained by a need for order and justice, while ensuring fundamental human rights, does not indicate how this knowledge is to be applied. Furthermore, such rights do not develop in a philosophical and theoretical vacuum, but rather in interaction with social, cultural, economic and political forces. Hence, practical philosophical analysis must recognize the constraints of feasibility.

Martin Wight offers the way forward with his analysis of the three traditions of thinking about international politics in the history of Western civilization. Of the three traditions discussed by Wight, the Rationalist offers the greatest prospects of charting a practical course forward.

J. MARTIN WIGHT: THE THREE TRADITIONS

Martin Wight in his book, *International Theory: The Three Traditions*, makes a compelling argument that Western thinking about international politics can be classified as reflecting traditions populated by Rationalists, Realists, or Revolutionists.²⁹¹ It is important to keep in mind that for Wight the three traditions “are not clear-cut pigeon holes, but can overlap.”²⁹² The three-fold categorization better reflects the complex

²⁹⁰ Peter Berger, “Are Human Rights Universal?” *Commentary*, September 1977, 60-63.

²⁹¹ Martin Wight, *International Theory: The Three Traditions*, 7.

²⁹² *Ibid.*, 15. See also, 259.

reality and therefore offers advantages over the traditional dualist scheme of Idealists and Realists as propounded by, among others, Max Weber, E.H. Carr, and Hans Morgenthau.²⁹³

Thus, for instance, utilizing Weber's framework, Amstutz is left searching for a new category, for a "satisfactory strategy of moral politics must include vision and transcendence, affirmed in idealism, and the calculation of interests and capabilities, emphasized by realism."²⁹⁴ It is Wight's Rationalist tradition that fulfills Amstutz' requirements.²⁹⁵ The Rationalist acknowledges natural laws and seeks cooperation in the realm of international relations to solve the complex moral problems facing humanity.

The Rationalist, or Grotian, alone emphasizes the "moral tensions and difficulties involved in limiting power and in identifying the lesser evil in specific situations."²⁹⁶ He is unlike the Realist, or Machiavellian, who views the international scene as purely anarchical, despite the evidence of order, and who considers laws an illusion and pragmatism the only standard, despite the universality of various principles. He is also unlike the Revolutionist or Kantian, who proclaims the immanence of a world community

²⁹³ Gerth and Mills, 120-122. In Weber's scheme, Idealism constituted an "ethic of ultimate ends" and Realism constituted an "ethic of responsibility" (Gerth and Mills, 120). Wight specifically addresses the dualism of Carr (realism versus utopianism) and Morgenthau (realism versus idealism) (Wight, *International Theory: The Three Traditions*, 267).

²⁹⁴ Amstutz, 20.

²⁹⁵ Amstutz, either unfamiliar with Wight's taxonomy or desiring not to make use of it, is forced to devise the term, "principled pragmatist," to delineate the balanced way forward (Amstutz, 32).

²⁹⁶ Yost, "Political Philosophy," 266.

despite the anarchical elements, and who believes that war can and will be abolished.²⁹⁷ In the truest sense, it is the Rationalist who is the "realist" while the Realist is often nothing more than a nihilist and the Revolutionist sometimes merely a visionary and dreamer. In light of the "need to create someday ahead,"²⁹⁸ it is the Rationalist who achieves an "equipoise of these excesses"²⁹⁹ and fulfills F. Scott Fitzgerald's standard of a "first rate" mind: "The ability to hold two opposed ideas in the mind at the same time, and still retain the ability to function."³⁰⁰

Thus, to acknowledge the existence of absolutes and yet realize that human finiteness limits application, and to utilize power in the service of that which is good, these have been the challenges throughout history in man's quest for justice. It is a quest that has no end, for justice achieved is like an equilibrium obtained by standing on an ever moving object. History does not stand still. E. H. Carr, whom Wight describes as a Realist, nonetheless provides a brilliant synopsis of the inherent difficulty of obtaining this equilibrium but also the imperative need of attempting to achieve it nonetheless:

[A]ny sound political thought must be based on elements of both utopia and reality. Where utopianism has become a hollow and intolerable sham, which serves as a disguise for

²⁹⁷ In fairness to Kant, it should be noted that his vision for a universal civil society was tempered by a realistic awareness that such a task would be "hardest of all. Indeed, its complete solution is impossible, for from such crooked wood as man is made of, nothing perfectly straight can be built" (Kant, "Idea for a Universal History," in *On History* (Englewood Cliffs: Macmillan, 1993), 17).

²⁹⁸ Safire.

²⁹⁹ Chesterton, *Orthodoxy*, 100.

³⁰⁰ Fitzgerald quoted in John Bartlett, *Familiar Quotes*, 14th ed., rev. and enl. (Boston: Little, Brown and Company, 1968), 1036.

the interests of the privileged, the realist performs an indispensable service in unmasking it. But pure realism can offer nothing but a naked struggle for power which makes any kind of international society impossible. Having demolished the current utopia with the weapons of realism, we still need to build a new utopia of our own, which will one day fall to the same weapons. The human will will continue to seek an escape from the logical consequences of realism in the vision of an international order which, as soon as it crystallizes itself into concrete political form, becomes tainted with self-interest and hypocrisy, and must once more be attacked with the instruments of realism.³⁰¹

With the Rationalist, then, leading the attack, a consideration of intervention when tyrannical states attempt to undermine justice and suppress human rights can now take place.

K. HUMANITARIAN INTERVENTION

Intervention, generally defined as "coercive interference in the domestic affairs of another state" is an inherent "evil" in that it violates the moral rights of states.³⁰² Of the various forms of intervention, military intervention is the most drastic and should only be undertaken in situations of extreme emergency.³⁰³ Amstutz, therefore, accurately notes, "If justice is to be an absolute norm, state sovereignty must occasionally be compromised

³⁰¹ E. H. Carr, *The Twenty Years' Crisis, 1919-1939* (New York: Harper Torchbooks, 1964), 93.

³⁰² Neumann, 43.

³⁰³ Haass classifies the forms of military intervention as follows: deterrence, prevention, compellence, punishment, war-fighting, peace-making, nation-building, interdiction, humanitarian assistance, and rescue (49-65).

in the service of the common world good.”³⁰⁴ According to Haass, when a “government severely represses the human rights of its own people or when the erosion of the central governmental authority creates conditions in which innocent people are made vulnerable,”³⁰⁵ military intervention is not only legitimate but necessary.

Nonetheless, however worthy the cause, military intervention should only be undertaken as a last resort. That is to say that only after diplomacy and economic and political sanctions have failed to rectify the situation should military intervention be considered, and this on a case-by-case basis. A definitive set of rules dictating when and how to intervene would be unnecessarily restraining and, moreover, counterproductive. After all, abstract considerations can never anticipate particular contexts and the importance of judgment that such contexts require. This is especially evident in cases involving military intervention on behalf of human rights.

Indeed, military intervention in support of human rights is particularly tricky, for it involves the “deployment of forces to save lives without necessarily altering the political context.” This can entail the “delivery of basic human services where the central authority is unable or unwilling to do so, the evacuation of selected peoples, or the

³⁰⁴ Amstutz, 62.

³⁰⁵ Haass, 13.

protection of a people from governmental forces.”³⁰⁶ It is not inherently designed to offer a solution but rather “a respite from a problem and to do so at a reasonable cost.”³⁰⁷

However, the neglect of a solution could lead down a slippery slope. In fact, NATO’s interventions in Bosnia and Kosovo seem to illustrate precisely this problem. Stanley Hoffmann’s analogy may prove insightful: “Dealing with the humanitarian tip of the iceberg may be frustratingly too little; but dealing with the whole iceberg may be far too much, especially if one wants to move from rescue to prevention.”³⁰⁸ This frustration can bring about a chain of events that leads from preventing genocide to protecting human rights to attempting to install a democratic government.³⁰⁹ The potential dilemma of such a progression is twofold.

The first potential pitfall involves the exploitation of intervention as a guise for furthering various unilateral ambitions and so “perverting the administration of justice” and, in the end, negating the concept of sovereignty completely while doing immeasurable damage to the notion of human rights.³¹⁰ The importance of seeking collective action and tempering the use of force is not to be underestimated in avoiding

³⁰⁶ Ibid., 62.

³⁰⁷ Ibid., 99.

³⁰⁸ Stanley Hoffmann, “Out of the Cold: Humanitarian Intervention in the 1990s,” *Harvard International Review* 16, no. 1 (Fall 1993): 9.

³⁰⁹ Ernst B. Haas, “Beware of the Slippery Slope: Notes toward the Definition of Justifiable Intervention,” in *Emerging Norms of Justified Intervention*, ed. Laura W. Reed and Carl Kaysen (Cambridge, Mass: American Academy of Arts and Sciences, 1993), 70.

³¹⁰ Haas, 63.

such a travesty. Second, the long-term consequences of an initial short-term action undertaken to ease suffering must be considered before the start of any military intervention. Rashly intervening to alleviate the pain and only then probing for its origins or attempting remedies requiring ever greater involvement, only to pull out after realizing that the situation cannot be cured or that the cure must be found internally, is potentially worse than having not intervened in the first place. As Jane Sharp observes, "Ineffective intervention is worse than no intervention at all, since it raises expectations and prolongs the conflict."³¹¹

Therefore, the importance of prudence is undeniable. A well known Jewish proverb states, "Whoever saves one life, saves the world entire." However, if one's efforts are of such a nature that life is not necessarily saved but only offered a short reprieve from an imminent death, neither the one life nor the world are saved. As Amstutz's summarization of George Kennan's view astutely points out, "Since human rights cannot be separated from the institutions and practices of government or the social and cultural institutions of a specific society, it is impossible to impose specific standards without corresponding changes in the other aspects of society on which those rights depend."³¹² It is a matter of "technical prudence" to ensure that a state's intervention

³¹¹ Sharp, 47.

³¹² Amstutz, 135.

produces the desired outcomes.³¹³ Truly, such an undertaking requires a "feel for the complexities."³¹⁴

Humanitarian intervention, then, should not be undertaken lightly nor should it be viewed as an entanglement best avoided. Rather, the answer lies in a well thought out course of action based upon a feel for the complexities that maintains a short-term focus on alleviating human rights violations, while never losing sight of the long-term goal of assisting the transformation of "domestic structural impediments" to make them more supportive of human dignity.³¹⁵ To accomplish this end, derivations of the traditional Just War criteria are worthy of considerations.³¹⁶

Without delving into these criteria in full detail, an undertaking worthy in its own right and fraught with contentions, it is nonetheless worth recalling that interventions, wittingly or unwittingly, are often judged in light of them. Ironically, this often takes place after the intervention is underway or completed rather than as a step prior to taking

³¹³ Ken Booth, "Military Intervention: Duty and Prudence," in *Military Intervention in European Conflicts*, ed. Lawrence Freedman (Cambridge, Mass.: Blackwell Publishers, 1994), 58. Booth defines "technical prudence" as a matter of being able to answer four questions: "Is there an achievable political settlement? Can military force deliver a solution? Is there dependable domestic and international support? Do we have the correct tactics and strategy for military intervention?" (Booth, 65-70).

³¹⁴ *Ibid.*, 62.

³¹⁵ Amstutz, 132.

³¹⁶ Haass discusses ten issues that need to be considered when determining whether or not to intervene (Haass, 69-90). Hedley Bull performs a similar service in his discussion of five exceptions to non-intervention recognized by lawyers and moralists (Bull, 2-3) as well as discussing the criteria which determine the degree of legitimacy of a particular intervention (Bull, 190-91). Both acknowledge humanitarian assistance as a valid reason for intervention. However, for intervention to be strategically necessary, Amstutz argues that it must benefit directly the people on whose behalf intervention is being carried out and be essential to the "long-term interests of the intervening state and its allies" (Amstutz, 82).

action. Briefly listing the criteria reveals the importance of deliberate rather than reactive consideration of them:

1. Just cause – The only just cause for violent resistance is defense against violent injustice, including unjustified violent aggression.
2. Just/right intention – The only just intention is to restore (of perhaps achieve) peace and justice for the whole community.
3. Last resort – Recourse to violent resistance must be a last resort after every other effort to resolve the situation peacefully has been exhausted, and has failed.
4. Competent authority/official declaration of hostilities – The decision to resort to violence must be made by the highest proper representatives of those oppressed (and be recognized as their representatives by international authorities), and should be marked by an official declaration of hostilities.
5. Limited ends – Violent resistance must be conducted for limited ends only—sufficient to redress the actual injustice and to achieve peace and justice for all.
6. Proportionality – The means used to conduct violent resistance must be proportional to the offence and to the end intended.
7. Protection of innocent parties – Violence must only be directed against the forces of injustice and oppression. Innocent parties should be protected from direct or intentional attack.
8. Probability of success – Because, if a just peace cannot be achieved, the additional suffering caused by the insurrection would serve no purpose, violent resistance may only be undertaken where there is a reasonable chance of success, and must be discontinued if that chance fails.³¹⁷

As Retired British Major General Ian Durie observed of these criteria in light of the Kosovo crisis, though the answers provided by considering the questions these criteria pose may be incomplete, “They do however indicate the sort of serious questions we need

³¹⁷ The list is adapted from (Ret.) Maj. Gen. Ian Durie’s speech, “Can There Be a ‘Just War’ in an Unjust World?” (AMCF Europe Conference, Lake Balaton, Hungary, 4 June 1999).

to be asking of ourselves, and of our governments.”³¹⁸ In an often unjust world, the application of imperfect criteria is often the closest one can come to perfection.

³¹⁸ Durie.

VI. CONCLUSION

So the discussion comes full circle and the fact remains: "Even when your world is crumbling, you need to create some way ahead."³¹⁹ It is a return to the philosophical quest for truth which will, in large measure, chart the path that the Wightian Rationalist must traverse. Unlike the bleak pessimism of the Realist or the utopian visions of the Revolutionist, the Rationalist offers a truly rational approach to a realist world that yearns for a revolutionary new world order. To pursue precisely such a course of action, the universal standard of human rights must be upheld as normative.

Although not offering an ideal solution, these considerations, grounded on solid philosophical reasoning with universal applicability, nonetheless offer the best way forward. Ethics can never be comprehensively prescriptive but can only offer guidance in often wrenching decisions among greater and lesser evils. However, the decision-making process can be simplified or complicated by the wording of the international documents that serve as guiding lamps in the process of sorting out the complexities of peace.

The existing documents are so broad as to cause more debate than agreement. While the suffering continues, the politicians bicker. Greater coherence and clarity must be sought in the formulation (and the interpretation) of various international legal documents, specifically the UN Charter and the Universal Declaration of Human Rights, so that the principles of intervention and state sovereignty are properly interrelated and

³¹⁹ Saffire.

reconciled. As Damrosch argues, attempting to justify intervention under existing laws is stretching the legal categories to the breaking point.³²⁰

NATO's intervention in Kosovo only highlights this point. It should serve as an impetus to seek clarity, coherence, and enforcement where currently confusion, disorder, and stagnation reign. Furthermore, if the course of military intervention is chosen, it should be pursued only after diplomacy and other non-military means of intervention have failed. While the objective should be collective security pursued through collective intervention, this should not exclude a willingness to act unilaterally if the violation of human rights is exceedingly grievous, the capability to act exists, and the collective will is lacking. Finally, any and all action must be tempered with an acute awareness that traditional notions of self-serving power politics—or even the perception thereof—will be met with hostility and open resistance. This reaction applies not only to sectors of world opinion but especially to the states which are the objects of intervention; such states are acutely aware of the associated stigma of not being a “full member of the international community.”³²¹

In the end, although “history awaits the newly practical and more sophisticated Wilson, . . . we must [nonetheless] strike hard now to prevent unacceptable suffering.”³²² As Bertolt Brecht has observed, there are times when even a “conversation about trees is

³²⁰ Damrosch quoted in Burley and Kaysen, 13.

³²¹ Ibid., 11.

³²² Roger Cohen, “NATO Shatters Old Limits in the Name of Preventing Evil.”

almost a crime because it implies being silent about so many horrors.”³²³ In the final analysis, whether one is a Realist, Rationalist, Revolutionist, relativist, or absolutist, the words of Pastor Martin Niemoller should remain etched in the minds of every man as a warning:

When Hitler attacked the Jews I was not a Jew, therefore I was not concerned. And when Hitler attacked the Catholics, I was not a Catholic, and therefore, I was not concerned. And when Hitler attacked the unions and the industrialists, I was not a member of the unions and I was not concerned. Then Hitler attacked me and the Protestant church — and there was nobody left to be concerned.³²⁴

Now is the time for concern. The way of wisdom for the Rationalist has been marked; let him pursue it while there is still somebody “left to be concerned.”

³²³ Brecht quoted in Ash, “Ten Years in Europe.”

³²⁴ Martin Niemoller, as quoted by Harry W. Mazel. Available [Online]: <http://www.magnet.ch/serendipity/cda/niemoll.html> [12 November 1999]. Mazel states this to be the exact text of what Martin Niemöller said and which appears in the *Congressional Record*, 14, October 1968, page 31636.

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